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**CUMULATIVE SUPPLEMENT**  
**TO**  
**MISSISSIPPI CODE**  
**1972 ANNOTATED**

**Issued September 2014**

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## **User's Guide**

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.





## **PUBLISHER'S FOREWORD**

### **Statutes**

The 2014 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2014 Regular Session and 1st and 2nd Extraordinary Sessions.

### **Annotations**

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

- Southern Reporter, 3rd Series
- United States Supreme Court Reports
- Supreme Court Reporter
- United States Supreme Court Reports, Lawyers' Edition, 2nd Series
- Federal Reporter, 3rd Series
- Federal Supplement, 2nd Series
- Federal Rules Decisions
- Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

- American Law Reports, 6th Series
- American Law Reports, Federal 2nd
- Mississippi College Law Review
- Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

### **Amendment Notes**

Amendment notes detail how the new legislation affects existing sections.

### **Editor's Notes**

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

## **PUBLISHER'S FOREWORD**

### **Joint Legislative Committee Notes**

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

### **Tables**

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2014 Regular Session and 1st and 2nd Extraordinary Sessions.

### **Index**

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

### **Acknowledgements**

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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# **SCHEDULE OF NEW SECTIONS**

Added in this Supplement

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# MISSISSIPPI CODE 1972

ANNOTATED

## VOLUME THIRTEEN A

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### TITLE 61 AVIATION

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#### CHAPTER 3

#### Airport Authorities

SEC.  
61-3-19.      Disposal of airport property.

#### § 61-3-19. Disposal of airport property.

(1)(a) Except as may be limited by the terms and conditions of any grant, loan or agreement authorized by Section 61-3-25, an authority may, by sale, lease or otherwise, dispose of any airport, air navigation facility or other property, real or personal, or portion thereof or interest therein, acquired pursuant to this chapter. If Section 29-1-1 is applicable to a sale of real property, the sale shall comply with Section 29-1-1.

(b) If Section 29-1-1 is not applicable, the disposal by sale, lease or otherwise, shall be in accordance with the following procedure. The authority shall find and determine by resolution duly and lawfully adopted and spread upon its minutes that:

(i) The property is no longer needed for authority purposes and is not to be used in the authority's operation;

(ii) There is no state agency, board, commission or any governing authority within the state that has expressed a need or use for the property and the federal government has not expressed a need or use for the property; and

(iii) The use of the property for the purpose for which it is to be sold, leased or otherwise disposed of will promote and foster the development and improvement of the authority or of the community in which it is located and the civic, social, educational, cultural, moral, economic or industrial welfare thereof.

(2) After making the determinations, the authority may sell, lease or otherwise dispose of the property in accordance with applicable law and by any of the following methods:



(a) The authority may sell, lease or otherwise dispose of the property if the consideration is not less than the fair market price for the property as determined by averaging the appraisals of two (2) professional property appraisers selected by the authority and approved by the purchaser or lessee. Appraisal fees shall be shared equally by the authority and the purchaser or lessee.

(b) The authority may sell, lease or otherwise dispose of the property to the highest bidder after publishing at least once each week for three (3) consecutive weeks in a public newspaper published in the county in which the property is located, or if no newspaper is published in the county, then in a newspaper having general circulation therein, the authority's intention to lease, sell or otherwise dispose of the property and to accept sealed competitive bids for the sale, lease or disposal of the property. The authority shall thereafter accept bids for the sale, lease or disposal of the property and shall award the sale, lease or disposal to the highest bidder.

(c) The authority may sell and dispose of personal property at public sale for cash to the highest bidder after publishing at least once each week for three (3) consecutive weeks in a public newspaper published in the county in which the property is located, or if no newspaper is published in the county, then in a newspaper having general circulation therein, the authority's intention to sell and dispose of the personal property at public sale for cash. Any public sale for cash may be conducted by or on behalf of the authority. At the public sale for cash, the personal property shall be sold and disposed of to the highest bidder.

(d) The authority may sell and dispose of personal property by use of an Internet web service available to the public, including, but not limited to, an Internet auction website, for cash or irrevocable electronic transfer of funds, to the highest bidder after publishing at least once each week for three (3) consecutive weeks in a public newspaper published in the county in which the property is located, or if no newspaper is published in the county, then in a newspaper having general circulation therein, the following information:

(i) The authority's intention to sell and dispose of the personal property through use of the Internet web service;

(ii) The location on the Internet website where the personal property will be listed; and

(iii) The listing date and closing date of the Internet sale.

At the Internet sale, the personal property shall be sold and disposed of to the highest bidder; provided, all Internet sales shall comply with federal law. In the event that any Internet sale is not concluded for any reason, the authority may relist and sell the personal property by use of the same Internet web service without the public notice set forth in this paragraph.

Notwithstanding anything herein to the contrary, in the case of a sale, lease or disposal of property to another authority, a municipality or an agency of the state or federal government for use and operation as a public airport, the sale, lease or other disposal thereof may be effected in such manner and upon such terms as the commissioners of the authority may deem to be in the best interest of civil aviation.

(3) The authority may lease lands owned by the authority for oil, gas and mineral exploration and development upon the terms and conditions and for consideration as the authority shall deem proper and advisable. However, no oil, gas or mineral lease shall be for a primary term of more than ten (10) years and the lease or leases shall provide for annual rentals of not less than One Dollar (\$1.00) per acre and shall provide for royalties of not less than three-sixteenths ( $\frac{3}{16}$ ) of all oil, gas and other minerals produced, including sulphur. All rentals, royalties or other revenue payable under any lease executed under this section shall be paid to and collected by the authority. The leases shall specifically provide that, in no event, shall any such lease or the exercise of any rights thereunder, interfere with the use of any airport or air navigational facilities for their intended purposes.

**SOURCES:** Codes, 1942, § 7545-39; Laws, 1958, ch. 230, § 9; Laws, 1984, ch. 370; Laws, 1992, ch. 379, § 7; Laws, 1993, ch. 615, § 14; Laws, 1996, ch. 404, § 4; Laws, 2011, ch. 470, § 1; Laws, 2012, ch. 450, § 3; Laws, 2014, ch. 523, § 1, eff from and after July 1, 2014.

**Amendment Notes** — The 2014 amendment, in (2)(d)(ii), deleted “listing” preceding “location”, substituted “on” for “of” and “will be listed” for “on the Internet website”, and inserted “Internet website where the” preceding “personal property”; in (2)(d)(iii), inserted “listing date and” preceding “closing date”, deleted “and time” preceding “of the Internet sale”, and added the last sentence of (d).





# TITLE 63

## MOTOR VEHICLES AND TRAFFIC REGULATIONS

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### CHAPTER 1

#### Driver's License

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#### ARTICLE 1.

#### DRIVER'S LICENSE.

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**§ 63-1-5. Requirement of motor vehicle operator's license; types of operator's licenses; penalty for violation of section.**

**[Until October 1, 2014, this section shall read as follows:]**

(1) No person shall drive or operate a motor vehicle other than a motorcycle upon the highways of the State of Mississippi without first securing an operator's license to drive on the highways of the state, except those persons especially exempted by Section 63-1-7.

(2) A person who violates this section is guilty of a misdemeanor and, upon conviction, may be punished by imprisonment for not less than two (2) days nor more than six (6) months, by a fine of not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00), or both.

**[From and after October 1, 2014, this section shall read as follows:]**

(1)(a) No person shall drive or operate a motor vehicle upon the highways of the State of Mississippi without first securing an operator's license to drive on the highways of the state, unless specifically exempted by Section 63-1-7.

(b) The types of operator's licenses are:

- (i) Class R;
- (ii) Class D;
- (iii) Class A, B or C commercial license governed by Article 5 of this chapter;
- (iv) Intermediate license; and
- (v) Ignition-interlock-restricted license as prescribed in Section 63-11-31.

(2)(a) Every person who makes application for an original license or a renewal license to operate any single vehicle with a gross weight rating of less than twenty-six thousand one (26,001) pounds or any vehicle towing a vehicle with a gross vehicle weight rating not in excess of ten thousand (10,000) pounds other than vehicles included in Class C, vehicles which require a special endorsement, or to operate a vehicle as a common carrier by motor vehicle, taxicab, passenger coach, dray, contract carrier or private commercial carrier as defined in Section 27-19-3, other than those vehicles for which a Class A, B or C license is required under Article 5 of this chapter, may, in lieu of the Class R regular driver's license, apply for and obtain a Class D driver's license. The fee for the issuance of a Class D driver's license shall be as set forth in Section 63-1-43 and the Class D license shall be valid for the term prescribed in Section 63-1-47. Except as required under Article 5 of this chapter, no driver of a pickup truck shall be required to have a Class D or a commercial license regardless of the purpose for which the pickup truck is used.

(b) Persons operating vehicles listed in paragraph (a) of this subsection for private purposes or in emergencies need not obtain a Class D license.

(3) An ignition-interlock-restricted license allows a person to drive only a motor vehicle equipped with an ignition-interlock device.

(4) A person who violates this section is guilty of a misdemeanor and, upon conviction, may be punished by imprisonment for not less than two (2) days nor more than six (6) months, by a fine of not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00), or both.

**SOURCES:** Codes, 1942, § 8091; Laws, 1938, ch. 143; Laws, 1985, ch. 376, § 5; Laws, 2011, ch. 468, § 3; Laws, 2014, ch. 424, § 8, eff from and after Oct. 1, 2014.

**Amendment Notes** — The 2014 amendment added (1), (2), and (3), and redesignated former last undesignated paragraph as (4); in present (1)(a), deleted “other than a motorcycle” following “shall drive or operate a motor vehicle” and substituted “unless specifically” for “except those persons especially.”

### **§ 63-1-6. Requirement of motorcycle operator's license; requirement of temporary motorcycle permit.**

**[Until October 1, 2014, this section shall read as follows:]**

No person shall drive or operate a motorcycle upon the highways of the State of Mississippi without first securing either a regular operator's license with a motorcycle endorsement upon it, or a restricted motorcycle operator's license, except those persons especially exempted by Section 63-1-7, Mississippi Code of 1972; provided, however, that any person possessing a valid Mississippi operator's license issued prior to July 1, 1985, may operate a motorcycle upon the highways of this state until such time as said license expires. Upon the expiration of a license issued prior to July 1, 1985, and the payment of One Dollar (\$1.00), the applicant for renewal may obtain the necessary motorcycle endorsement without further examination.

A motorcycle endorsement may be issued any person who holds a valid Mississippi driver's license and meets the other requirement for such endorsement contained in this chapter.

A restricted motorcycle operator's license may be issued to any applicant who fulfills all the requirements necessary to obtain a Mississippi operator's license that may be applicable to the operation of a motorcycle. Such license shall entitle the holder thereof to operate a motorcycle, and no other motor vehicle, upon the highways of this state.

**[From and after October 1, 2014, this section shall read as follows:]**

(1) Unless exempted under Section 63-1-7, no person shall drive or operate a motorcycle upon the highways of the State of Mississippi without first securing an operator's license with a motorcycle endorsement upon it.

(2)(a) A motorcycle endorsement may be issued to any person who holds a valid Mississippi driver's license and meets the other requirements for a motorcycle endorsement contained in this chapter.

(b) Every applicant for a motorcycle endorsement shall first obtain a temporary motorcycle permit, successfully complete the examination provided in Section 63-1-33, and pay the temporary motorcycle permit fee and



examination fee prescribed in Section 63-1-43. Applicants for a temporary motorcycle permit shall:

- (i) Be at least fifteen (15) years of age;
- (ii) Operate a motorcycle only under the direct supervision of a person at least twenty-one (21) years of age who possesses either a valid driver's or operator's license with a motorcycle endorsement or a valid restricted motorcycle operator's license;
- (iii) Be prohibited from transporting a passenger on a motorcycle;
- (iv) Be prohibited from operating a motorcycle upon any controlled access highway; and
- (v) Be prohibited from operating a motorcycle during the hours of 6:00 p.m. through 6:00 a.m.

Temporary motorcycle driving permits shall be valid for the same period of time and may be renewed upon the same conditions as regular learner's permits issued under Section 63-1-21.

**SOURCES:** Laws, 1985, ch. 376, § 1; Laws, 2014, ch. 424, § 9, eff from and after Oct. 1, 2014.

**Amendment Notes** — The 2014 amendment redesignated the former first and second undesignated paragraphs as (1) and (2)(a); deleted the last undesignated paragraph in its entirety regarding issuance of a restricted motorcycle operator's license; and added (2)(b); in present (1), inserted "Unless excepted under Section 63-1-7," at the beginning of the sentence preceding "no person shall drive", substituted "an" for "either a regular", and deleted the remainder of this subsection, which read "or a restricted motorcycle operator's license, except those persons especially exempted by Section 63-1-7, Mississippi Code of 1972; provided, however, that any person possessing a valid Mississippi operator's license issued prior to July 1, 1985, may operate a motorcycle upon the highways of this state until such time as said license expires. Upon the expiration of a license issued prior to July 1, 1985, and the payment of One Dollar (\$1.00), the applicant for renewal may obtain the necessary motorcycle endorsement without further examination"; in present (2)(a), substituted "a motorcycle" for "such" towards the end of the sentence, inserted "to" following "endorsement may be issued" at the beginning of the sentence, and added an "s" to "requirements."

### **§ 63-1-8. Authorization to negotiate reciprocal driver's license agreement with the Republic of China (Taiwan).**

The Commissioner of Public Safety is authorized to negotiate a mutual agreement between the Mississippi Department of Public Safety and the Republic of China (Taiwan), through the Ministry of Transportation and Communications represented by the Director General of the Taipei Economic and Cultural Office in Houston, Texas, for reciprocity in issuing driver's licenses to citizens of the State of Mississippi residing in the Republic of China (Taiwan) and to Taiwanese citizens residing in the State of Mississippi. The mutual agreement shall be written and signed by the commissioner and Director General.

**SOURCES:** Laws, 2014, ch. 438, § 1, eff from and after passage (approved Mar. 26, 2014.)

**§ 63-1-9. Persons prohibited from obtaining license; issuance of regular learner's permits, intermediate licenses and driver's licenses.**

**[Until October 1, 2014, this section shall read as follows:]**

(1) No driver's license, intermediate license or temporary learning permit shall be issued pursuant to this article:

(a) To any person under the age of eighteen (18) years except as provided in this article.

(b) To any person whose license to operate a motor vehicle on the highways of Mississippi has been previously revoked or suspended by this state or any other state or territory of the United States or the District of Columbia, if the revocation or suspension period has not expired.

(c) To any person who is an habitual drunkard or who is addicted to the use of other narcotic drugs.

(d) To any person who would not be able by reason of physical or mental disability, in the opinion of the commissioner or other person authorized to grant an operator's license, to operate a motor vehicle on the highways with safety. However, persons who have one (1) arm or leg, or have arms or legs deformed, and are driving a car provided with mechanical devices whereby the person is able to drive in a safe manner over the highways, if otherwise qualified, shall receive an operator's license the same as other persons. Moreover, deafness shall not be a bar to obtaining a license.

(e) To any person who is under the age of seventeen (17) years to drive any motor vehicle while in use as a school bus for the transportation of pupils to or from school, or to drive any motor vehicle while in use as a public or common carrier of persons or property.

(f) To any person as an operator who has previously been adjudged to be afflicted with and suffering from any mental disability and who has not at time of application been restored to mental competency.

(g) To any unmarried person under the age of eighteen (18) years who does not at the time of application present a diploma or other certificate of high school graduation or a general educational development certificate issued to the person in this state or any other state; or on whose behalf documentation has not been received by the Department of Public Safety from that person or a school official verifying that the person:

(i) Is enrolled and making satisfactory progress in a course leading to a general educational development certificate;

(ii) Is enrolled in school in this state or any other state;

(iii) Is enrolled in a "nonpublic school," as such term is defined in Section 37-13-91(2)(i); or

(iv) Is unable to attend any school program due to circumstances deemed acceptable as set out in Section 63-1-10.

(h) To any person under the age of eighteen (18) years who has been convicted under Section 63-11-30.

(2) All permits and licenses issued on or before July 31, 2009, shall be valid according to the terms upon which issued. From and after August 1, 2009:



(a) A temporary driving permit may be issued to any person who is at least fifteen (15) years of age who otherwise meets the requirements of this article.

(b) An intermediate license may be issued to any person who is at least sixteen (16) years of age who otherwise meets the requirements of this article and who has held a temporary driving permit for at least one (1) year without any conviction under Section 63-11-30 or of a moving violation. Any conviction under Section 63-11-30 or of a moving violation shall restart the one-year requirement for the holding of a temporary driving permit before an applicant can qualify for an intermediate license.

(c) A driver's license may be issued to any person who is at least sixteen and one-half (16-½) years of age who otherwise meets the requirements of this article and who has held an intermediate license for at least six (6) months without any conviction under Section 63-11-30 or of a moving violation. Any conviction under Section 63-11-30 or of a moving violation shall restart the six-month requirement for the holding of an intermediate license before an applicant can qualify for a driver's license. However, a person who is at least seventeen (17) years of age who has been issued a temporary driving permit and who has never been convicted under Section 63-11-30 or of a moving violation shall not be required to have held an intermediate license.

(d) An applicant for a Mississippi driver's license who, at the time of application, is at least sixteen and one-half (16-½) years of age and who has held a valid motor vehicle driver's license issued by another state for at least six (6) months shall not be required to hold a temporary driving permit or an intermediate license before being issued a driver's license.

(3) The commissioner shall ensure that the temporary driving permit, intermediate license and driver's license issued under this article are clear, distinct and easily distinguishable from one another.

**[From and after October 1, 2014, this section shall read as follows:]**

(1) No driver's license, intermediate license or regular learner's permit shall be issued pursuant to this article:

(a) To any person under the age of eighteen (18) years except as provided in this article.

(b) To any person whose license to operate a motor vehicle on the highways of Mississippi has been previously revoked or suspended by this state or any other state or territory of the United States or the District of Columbia, if the revocation or suspension period has not expired.

(c) To any person who is an habitual drunkard or who is addicted to the use of other narcotic drugs.

(d) To any person who would not be able by reason of physical or mental disability to operate a motor vehicle on the highways with safety. However, persons who have one (1) arm or leg, or have arms or legs deformed, and are driving a car provided with mechanical devices whereby the person is able to drive in a safe manner over the highways, if otherwise qualified, shall

receive an operator's license the same as other persons. Moreover, deafness shall not be a bar to obtaining a license.

(e) To any person as an operator who has previously been adjudged to be afflicted with and suffering from any mental disability and who has not at time of application been restored to mental competency.

(f) To any unmarried person under the age of eighteen (18) years who does not at the time of application present a diploma or other certificate of high school graduation or a general educational development certificate issued to the person in this state or any other state; or on whose behalf documentation has not been received by the Department of Public Safety from that person or a school official verifying that the person:

(i) Is enrolled and making satisfactory progress in a course leading to a general educational development certificate;

(ii) Is enrolled in school in this state or any other state;

(iii) Is enrolled in a "nonpublic school," as such term is defined in Section 37-13-91(2)(i); or

(iv) Is unable to attend any school program due to circumstances deemed acceptable as set out in Section 63-1-10.

(g) To any person under the age of eighteen (18) years who has been convicted under Section 63-11-30.

(2) All permits and licenses issued on or before July 31, 2009, shall be valid according to the terms upon which issued. From and after August 1, 2009:

(a) A regular learner's permit may be issued to any person who is at least fifteen (15) years of age who otherwise meets the requirements of this article.

(b) An intermediate license may be issued to any person who is at least sixteen (16) years of age who otherwise meets the requirements of this article and who has held a regular learner's permit for at least one (1) year without any conviction under Section 63-11-30 or of a moving violation. Any conviction under Section 63-11-30 or of a moving violation shall restart the one-year requirement for the holding of a regular learner's permit before an applicant can qualify for an intermediate license.

(c) A driver's license may be issued to any person who is at least sixteen and one-half (16½) years of age who otherwise meets the requirements of this article and who has held an intermediate license for at least six (6) months without any conviction under Section 63-11-30 or of a moving violation. Any conviction under Section 63-11-30 or of a moving violation shall restart the six-month requirement for the holding of an intermediate license before an applicant can qualify for a driver's license. However, a person who is at least seventeen (17) years of age who has been issued a regular learner's permit and who has never been convicted under Section 63-11-30 or of a moving violation shall not be required to have held an intermediate license.

(d) An applicant for a Mississippi driver's license who, at the time of application, is at least sixteen and one-half (16½) years of age and who has held a valid motor vehicle driver's license issued by another state for at least



six (6) months shall not be required to hold a regular learner's permit or an intermediate license before being issued a driver's license.

(3) The commissioner shall ensure that the regular learner's permit, intermediate license and driver's license issued under this article are clear, distinct and easily distinguishable from one another.

**SOURCES:** Codes, 1942, § 8093; Laws, 1938, ch. 143; Laws, 1985, ch. 376, § 7; Laws, 1994, ch. 588, § 1; Laws, 1995, ch. 540, § 2; Laws, 1996, ch. 527, § 1; Laws, 2000, ch. 624, § 2; Laws, 2009, ch. 488, § 1; Laws, 2014, ch. 424, § 19, eff from and after Oct. 1, 2014.

**Amendment Notes** — The 2014 amendment, in (1), (2), and (3), substituted “regular learner’s” for “temporary driving”; in (1)(d), deleted “, in the opinion of the commissioner or other person authorized to grant an operator’s license,” from the first sentence; deleted (1)(e) and redesignated the remaining subsections accordingly.

## § 63-1-21. Temporary permits; intermediate licenses.

**[Until October 1, 2014, this section shall read as follows:]**

(1) To obtain a new or original driver's or operator's license, every applicant other than a person holding an out-of-state license shall first obtain a temporary driving permit by paying a fee of One Dollar (\$1.00) to the Department of Public Safety, successfully completing the examination provided for in Section 63-1-33, and paying the examination fee provided for in Section 63-1-43.

(2) A temporary driving permit entitles the holder, provided the permit is in his immediate possession, to drive a motor vehicle other than a motorcycle on the highways of the State of Mississippi only when accompanied by a licensed operator who is at least twenty-one (21) years of age and who is actually occupying the seat beside the driver. A temporary driving permit may be issued to any applicant who is at least fifteen (15) years of age. A temporary driving permit shall be valid for a period of two (2) years from the date of issue.

(3)(a) An intermediate license allows unsupervised driving from 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 6:00 a.m. to 11:30 p.m. Friday and Saturday, and allows unsupervised driving any time for a person traveling directly to or from work. At all other times the intermediate licensee must be supervised by a parent, guardian or other person age twenty-one (21) years or older who holds a valid driver's license under this article and who is actually occupying the seat beside the driver.

(b) The fee for issuance of an intermediate license shall be Five Dollars (\$5.00).

(4) An ignition-interlock-restricted driver's license allows a person to drive only a motor vehicle equipped with an ignition-interlock device.

(5) Except as otherwise provided by Section 63-1-6, every applicant for a restricted motorcycle operator's license or a motorcycle endorsement shall first obtain a temporary motorcycle driving permit by paying a fee of One Dollar (\$1.00) to the Department of Public Safety, successfully completing the examination provided for in Section 63-1-33, and paying the examination fee



provided for in Section 63-1-43. All applicants for a temporary motorcycle permit shall:

- (a) Be at least fifteen (15) years of age;
- (b) Operate a motorcycle only under the direct supervision of a person at least twenty-one (21) years of age who possesses either a valid driver's or operator's license with a motorcycle endorsement or a valid restricted motorcycle operator's license;
- (c) Be prohibited from transporting a passenger on a motorcycle;
- (d) Be prohibited from operating a motorcycle upon any controlled access highway; and
- (e) Be prohibited from operating a motorcycle during the hours of 6:00 p.m. through 6:00 a.m. Temporary motorcycle driving permits shall be valid for the same period of time and may be renewed upon the same conditions as temporary driving permits issued for vehicles other than motorcycles.

**[From and after October 1, 2014, this section shall read as follows:]**

(1) To obtain a new or original Class R, Class D or intermediate driver's license, every applicant other than a person holding a valid out-of-state license shall first obtain a regular learner's permit, successfully complete the examination provided for in Section 63-1-33, and pay the regular learner's permit fee and examination fee prescribed in Section 63-1-43.

(2) A regular learner's permit entitles the holder, if the permit is in his immediate possession, to drive a motor vehicle other than a motorcycle on the highways of the State of Mississippi only when accompanied by a licensed operator who is at least twenty-one (21) years of age and who is actually occupying the seat beside the driver. A regular learner's permit may be issued to any applicant who is at least fifteen (15) years of age and shall be valid for a period of two (2) years from the date of issue.

(3)(a) An intermediate license allows unsupervised driving from 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 6:00 a.m. to 11:30 p.m. Friday and Saturday, and allows unsupervised driving any time for a person traveling directly to or from work. At all other times the intermediate licensee must be supervised by a parent, guardian or other person aged twenty-one (21) years or older who holds a valid driver's license under this article and who is actually occupying the seat beside the driver.

(b) The fee for issuance of an intermediate license shall be as prescribed in Section 63-1-43.

**SOURCES:** Codes, 1942, § 8095; Laws, 1938, ch. 143; Laws, 1956, ch. 378, § 2; Laws, 1964, ch. 454; Laws, 1966, ch. 570, § 1; Laws, 1985, ch. 376, § 2; Laws, 1994, ch. 588, § 6; Laws, 2000, ch. 624, § 3; Laws, 2009, ch. 488, § 3; Laws, 2011, ch. 467, § 1; Laws, 2013, ch. 489, § 3; Laws, 2014, ch. 424, § 10, eff from and after Oct. 1, 2014.

**Amendment Notes** — The 2014 amendment rewrote (1) regarding obtaining certain classes of driver's license; in (2), substituted "regular learner's" for "temporary driving" in two places, "if" for "provided" in the first sentence, "and" for ". A temporary driving permit" at the beginning of the former third sentence; in (3)(b), substituted "as

prescribed in Section 63-1-43” for “Five Dollars (\$5.00)” at the end of the sentence; deleted (4) and (5) in their entireties regarding ignition-interlock-restricted driver’s license and restricted motorcycle operator’s license; and made a minor stylistic change.

**§ 63-1-25. Imputation of negligence or willful misconduct of driver under seventeen years of age to person signing application for license.**

**JUDICIAL DECISIONS**

**1. In general.**

Trial court properly granted summary judgment as to a passenger’s claims of negligent entrustment against a driver’s mother because the passenger’s reliance on the driver’s past alcohol and marijuana consumption was irrelevant to whether the mother was negligent in entrusting

the vehicle to the driver since no issue of material fact existed that alcohol or other substances contributed to accident. the driver was not under the influence at the time of the accident. *Garvin v. Tupelo Furniture Mkt.*, 127 So. 3d 197 (Miss. 2013).

**§ 63-1-33. Examination of applicant for license or regular learner’s permit; inspection of applicant’s automobile; certification of successful completion of driver education and training program at secondary school in lieu of examination.**

**[Until October 1, 2014, this section shall read as follows:]**

(1) Except as otherwise provided under subsection (6) of this section, it shall be the duty of the license examiner, when application is made for an operator’s license or temporary driving permit, to test the applicant’s ability to read and understand road signs and to give the required signals as adopted by the National Advisory Committee on Uniform Traffic Control Devices and the American Association of Motor Vehicle Administrators.

(2) Except as otherwise provided under subsection (6) of this section, the commissioner shall have prepared and administer a test composed of at least ten (10) questions relating to the safe operation of a motor vehicle and testing the applicant’s knowledge of the proper operation of a motor vehicle. Every examination shall ensure adequate knowledge on the part of the applicant as to school bus safety requirements.

(3) Prior to the administration of the test, the license examiner shall inspect the horn, lights, brakes, inspection certificate and vehicle registration of the motor vehicle which the applicant expects to operate while being tested, and if he finds that any of the aforementioned items are deficient, no license or endorsement shall be issued to the applicant until same have been repaired.

(4) An applicant for a Mississippi driver’s license who, at the time of application, holds a valid motor vehicle driver’s license issued by another state shall not be required to take a written test.

(5) Except as otherwise provided by Section 63-1-6, when application is made for an original motorcycle endorsement or a restricted motorcycle



operator's license, the applicant shall be required to pass a written test which consists of questions relating to the safe operation of a motorcycle and a skill test similar to the "Motorcycle Operator Skill Test," which is endorsed by the American Association of Motor Vehicle Administrators. The commissioner may exempt any applicant from the skill test if the applicant presents a certificate showing successful completion of a course approved by the commissioner, which includes a similar examination of skills needed in the safe operation of a motorcycle.

(6) The Department of Public Safety may accept the certification of successful completion of an individual's training in the knowledge and skills needed for the proper and safe operation of a motor vehicle from a driver education and training program at a secondary school that meets the standards of the department, in lieu of the department administering the examination of the individual for the purpose of obtaining a driver's license. The commissioner and the State Board of Education shall jointly promulgate rules and regulations for the administration of this subsection.

**[From and after October 1, 2014, this section shall read as follows:]**

(1) Except as otherwise provided under subsection (6) of this section, it shall be the duty of the license examiner, when application is made for an operator's license or regular learner's permit, to test the applicant's ability to read and understand road signs and to give the required signals as adopted by the National Advisory Committee on Uniform Traffic Control Devices and the American Association of Motor Vehicle Administrators.

(2) Except as otherwise provided under subsection (6) of this section, the commissioner shall have prepared and administer a test composed of at least ten (10) questions relating to the safe operation of a motor vehicle and testing the applicant's knowledge of the proper operation of a motor vehicle. Every examination shall ensure adequate knowledge on the part of the applicant as to school bus safety requirements.

(3) Prior to the administration of the test, the license examiner shall inspect the horn, lights, brakes, inspection certificate, vehicle registration and proof of liability coverage of the motor vehicle which the applicant expects to operate while being tested, and if he finds that any of the aforementioned items are deficient, no license or endorsement shall be issued to the applicant until same have been repaired.

(4) An applicant for a Mississippi driver's license who, at the time of application, holds a valid motor vehicle driver's license issued by another state shall not be required to take a written test.

(5) Except as otherwise provided by Section 63-1-6, when application is made for an original motorcycle endorsement, the applicant shall be required to pass a written test which consists of questions relating to the safe operation of a motorcycle and a skill test similar to the "Motorcycle Operator Skill Test," which is endorsed by the American Association of Motor Vehicle Administrators. The commissioner may exempt any applicant from the skill test if the applicant presents a certificate showing successful completion of a course

approved by the commissioner, which includes a similar examination of skills needed in the safe operation of a motorcycle.

(6) The Department of Public Safety may accept the certification of successful completion of an individual's training in the knowledge and skills needed for the proper and safe operation of a motor vehicle from a driver education and training program at a secondary school that meets the standards of the department, in lieu of the department administering the examination of the individual for the purpose of obtaining a driver's license. The commissioner and the State Board of Education shall jointly promulgate rules and regulations for the administration of this subsection.

**SOURCES:** Codes, 1942, § 8100; Laws, 1938, ch. 143; Laws, 1985, ch. 376, § 3; Laws, 1998, ch. 352, § 1; Laws, 1999, ch. 393, § 2; Laws, 2000, ch. 614, § 1; Laws, 2010, ch. 346, § 1; Laws, 2011, ch. 481, § 5; Laws, 2014, ch. 424, § 20, eff from and after Oct. 1, 2014.

**Amendment Notes** — The 2014 amendment, in (1), substituted “regular learner’s” for “temporary driving”; in (3), substituted a comma for “and” following “lights, brakes, inspection certificate”; and inserted “and proof of liability coverage” following “vehicle registration”; in (5), deleted “or a restricted motorcycle operator’s license” following “for an original motorcycle endorsement.”

### § 63-1-37. Issuance of duplicate license.

**[Until October 1, 2014, this section shall read as follows:]**

If a license or temporary driving permit issued under the provisions of this article is lost or destroyed, the licensee shall obtain from the commissioner a duplicate copy thereof and shall pay a fee in the amount of Five Dollars (\$5.00) plus the applicable photograph fee for the first and each subsequent duplicate copy. The license or permit shall be marked “Duplicate.”

All fees collected under this section, except photograph fees, shall be deposited into the State General Fund. Photograph fees collected under this section shall be deposited pursuant to the provisions of Section 63-1-43.

**[From and after October 1, 2014, this section shall read as follows:]**

If a license or regular learner's permit issued under the provisions of this article is lost or destroyed, the licensee may obtain a duplicate copy by paying the fee prescribed in Section 63-1-43. The license or permit shall be marked “Duplicate.”

**SOURCES:** Codes, 1942, § 8104; Laws, 1938, ch. 143; Laws, 1956, ch. 378, § 4; Laws, 1984, ch. 349; Laws, 1985, ch. 376, § 14 eff from and after July 1, 1985; Laws, 2001, ch. 535, § 2; Laws, 2002, ch. 584, § 1; Laws, 2011, ch. 467, § 3; Laws, 2014, ch. 424, § 11, eff from and after Oct. 1, 2014.

**Amendment Notes** — The 2014 amendment, in the first undesignated paragraph, substituted “regular learner’s” for “temporary driving”, “may obtain” for “shall obtain from the commissioner”, and “by paying the fee prescribed in Section 63-1-43” for “thereof and shall pay a fee in the amount of Five Dollars (\$5.00) plus the applicable photograph fee for the first and each subsequent duplicate copy”; and deleted the second



undesignated paragraph in its entirety regarding depositing of fees into State General Fund.

### § 63-1-43. Fees for licenses generally.

**[Until October 1, 2014, this section shall read as follows:]**

(1) The fee for receiving the application and issuing the regular driver's or operator's license and the fee for renewing the license shall be:

(a) Eighteen Dollars (\$18.00) plus the applicable photograph fee for each applicant for a four-year license;

(b) Forty Dollars (\$40.00) plus the applicable photograph fee for each applicant for an eight-year license;

(c) Three Dollars (\$3.00) plus the applicable photograph fee for each applicant for a one-year license, except as provided in paragraph (d) of this subsection;

(d) Eighteen Dollars (\$18.00) plus the applicable photograph fee for a license for an applicant who is not a United States citizen and who does not possess a social security number issued by the United States government;

(e)(i) Fifty Dollars (\$50.00) plus the applicable photograph fee for an ignition-interlock-restricted driver's license which shall be provided to the Department of Public Safety to defray the costs associated with the department's duties and responsibilities regarding ignition-interlock device usage.

(ii) There is created in the State Treasury a special fund to be known as the Ignition-Interlock Device Fund. The purpose of the fund shall be to provide funding for the Driver's License Bureau of the Department of Public Safety and also to provide funding assistance for ignition-interlock devices for persons determined by the court to be unable to afford the installation and maintenance of an ignition-interlock device. Monies from the fund shall be distributed by the State Treasurer upon warrants issued by the Department of Public Safety. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of:

1. Monies appropriated by the Legislature for the purposes of funding the Driver's License Bureau;

2. The interest accruing to the fund;

3. Monies paid by a person for an ignition-interlock device under Section 63-11-31(2)(a); and

4. Monies received from such other sources as may be provided by law; and

(f) In addition to the fees required in paragraph (a) of this subsection, an applicant may contribute an additional One Dollar (\$1.00) which shall be deposited into the Statewide Litter Prevention Fund. The applicant shall be informed that he may contribute an additional One Dollar (\$1.00) which shall be deposited into the Statewide Litter Prevention Fund and shall be expended solely for the purpose of funding litter prevention projects or litter education programs, as recommended by the Statewide Litter Prevention Program of Keep Mississippi Beautiful, Inc.

All originals and renewals of regular operators' licenses shall be in compliance with Section 63-1-47.

(2) The fee for receiving the application and issuing a motorcycle endorsement shall be Five Dollars (\$5.00) when issued as an endorsement to a four-year license, and Ten Dollars (\$10.00) when issued as an endorsement to an eight-year license. Motorcycle endorsements shall be valid for the same period of time as the applicant's operator's license.

(3) The fee for receiving the application and issuing a restricted motorcycle operator's license and the fee for renewing such license shall be:

(a) Eleven Dollars (\$11.00) plus the applicable photograph fee for a four-year license;

(b) Eight Dollars (\$8.00) plus the applicable photograph fee for a one-year license; and

(c) Twenty-two Dollars (\$22.00) plus the applicable photograph fee for an eight-year license.

All originals and renewals of restricted motorcycle licenses shall be valid for the same period of time that an original regular driver's license may be issued to such person in compliance with Section 63-1-47.

(4) From and after January 1, 1990, every person who makes application for an original license or a renewal license to operate a vehicle as a common carrier by motor vehicle, taxicab, passenger coach, dray, contract carrier or private commercial carrier as such terms are defined in Section 27-19-3, except for those vehicles for which a Class A, B or C license is required under Article 5 of this chapter, shall, in lieu of the regular driver's license above provided for, apply for and obtain a Class D commercial driver's license. Except as otherwise provided in subsection (5) of this section, the fee for the issuance of a Class D commercial driver's license shall be Twenty-three Dollars (\$23.00) plus the applicable photograph fee for a period of four (4) years; however, except as required under Article 5 of this chapter, no driver of a pickup truck shall be required to have a commercial license regardless of the purpose for which the pickup truck is used.

Except as otherwise provided in subsection (5) of this section, all originals and renewals of commercial licenses issued under this section shall be valid for a period of four (4) years, in compliance with Section 63-1-47. Only persons who operate the above-mentioned vehicles in the course of the regular and customary business of the owner shall be required to obtain a Class D commercial operator's license, and persons operating such vehicles for private purposes or in emergencies shall not be required to obtain such license.

(5) The original and each renewal of a commercial driver's license issued under this section to a person who is not a United States citizen and who does not possess a social security number issued by the United States government shall be issued for a period of one (1) year for a fee of Eight Dollars (\$8.00) plus the applicable photograph fee and shall expire one (1) year from the date of issuance. Such person may renew a commercial license issued under this section within thirty (30) days of expiration of the license.

(6) The Commissioner of Public Safety, by rule or regulation, shall establish a driver's license photograph fee which shall be the actual cost of the

photograph rounded off to the next highest dollar. Monies collected for the photograph fee shall be deposited into a special photograph fee account which the Department of Public Safety shall use to pay the actual cost of producing the photographs. Any monies collected in excess of the actual costs of the photography shall be used by the department to defray the cost of future photography and driver's license technology initiatives.

**[From and after October 1, 2014, this section shall read as follows:]**

(1) The commissioner shall charge and collect the following fees:

(a) Fees to which the card stock fee authorized in Section 45-1-21 shall be added:

Class R original or renewal four-year license authorized in Section 63-1-5 .....	\$18.00
Class R original or renewal eight-year license authorized in Section 63-1-5 .....	\$36.00
Class D original or renewal four-year license authorized in Section 63-1-47 .....	\$23.00
Class D original or renewal eight-year license authorized in Section 63-1-47 .....	\$46.00
Four-year Identification Card authorized in Section 45-35-7 .....	\$11.00
Eight-year Identification Card authorized in Section 45-35-7 .....	\$22.00
Eight-year Identification Card for the blind authorized in Section 45-35-7 .....	\$11.00
Four-year Disability Identification Card authorized in Section 45-35-53 .....	\$11.00
Regular Learner's Permit authorized in Section 63-1-21 .....	\$ 1.00
Duplicate Identification Card or Disability Identification Card .....	\$ 5.00
Intermediate license authorized in Section 63-1-21 .....	\$ 5.00
Duplicate Class R or Class D license authorized in Section 63-1-37 .....	\$ 5.00
Class A, B or C Commercial driver's license authorized in Section 63-1-208 .....	\$48.00
CDL Learner's Permit authorized in Section 63-1-208 .....	\$10.00
Duplicate CDL or CDL learner's permit .....	\$ 5.00
Ignition-Interlock-Restricted License authorized in Section 63-11-31 .....	\$50.00

(b) Driver services fees to which the card stock fee authorized in Section 45-1-21 is not added:

Temporary Motorcycle Permit .....	\$ 1.00
Four-year or eight-year Motorcycle Endorsement .....	\$ 5.00
Late Renewal Fee .....	\$ 1.00
Four-year Identification Card upon medical reason for surrender of a driver's license as authorized in	



Section 45-35-7 (one (1) time only) .....	No fee
Hazardous Materials Background Check (federal) .....	\$63.00
Hazardous Materials Background Check (state) .....	\$37.00
CDL Application Fee .....	\$25.00
CDL Endorsements:	
Tanker Endorsement .....	\$ 5.00
Doubles/Triples Endorsement .....	\$ 5.00
Passenger Endorsement .....	\$ 5.00
Hazardous Materials Endorsement .....	\$ 5.00
School Bus Endorsement .....	\$ 5.00

(c) In addition to the fees required in this section, an applicant may contribute an additional One Dollar (\$1.00) which shall be deposited into the Statewide Litter Prevention Fund. The applicant shall be informed that he may contribute an additional One Dollar (\$1.00) which shall be deposited into the Statewide Litter Prevention Fund and shall be expended solely for the purpose of funding litter prevention projects or litter education programs, as recommended by the Statewide Litter Prevention Program of Keep Mississippi Beautiful, Inc.

(2) All originals and renewals of operators' licenses shall be in compliance with Section 63-1-47.

**SOURCES:** Codes, 1942, § 8102; Laws, 1938, ch. 143; Laws, 1940, chs. 157, 167; Laws, 1946, ch. 420, § 7; Laws, 1948, ch. 343, § 5; Laws, 1950, ch. 408, § 1; Laws, 1956, ch. 378, § 3; Laws, 1958, ch. 493; Laws, 1962, ch. 523; Laws, 1968, ch. 539, § 1; Laws, 1973, ch. 383, § 1; Laws, 1981, ch. 453, § 2; Laws, 1985, ch. 376, § 4; Laws, 1989, ch. 482, § 23; Laws, 1992, ch. 469, § 1; Laws, 1994, ch. 588, § 8; Laws, 2001, ch. 535, § 3; Laws, 2002, ch. 584, § 5; Laws, 2009, ch. 560, § 30; Laws, 2010, ch. 423, § 1; Laws, 2011, ch. 468, § 2; Laws, 2012, ch. 433, § 1; Laws, 2012, ch. 483, § 1; Laws, 2013, ch. 489, § 4; Laws, 2014, ch. 424, § 12, eff from and after Oct. 1, 2014.

**Editor's Note** — Laws of 2014, ch. 512, § 5 provides:

"SECTION 5. The State Fiscal Officer shall transfer all of the funds that are deposited into the Ignition Interlock Device Fund during fiscal year 2015 into the Drug Court Fund. This section shall stand repealed on July 1, 2015."

**Amendment Notes** — The 2014 amendment rewrote the section to set forth a new fee schedule for permits and licenses.

**§ 63-1-46. Fees for reinstatement of license subsequent to suspension, revocation or cancellation generally; disposition of fees; procedure and fees for reinstatement of license suspended for noncompliance with support order.**

**[Until October 1, 2014, this section shall read as follows:]**

(1)(a) Except as otherwise provided in this section, a fee of One Hundred Dollars (\$100.00) shall be charged for the reinstatement of a license issued under this article to every person whose license has been validly suspended, revoked or cancelled.



(b) The funds received under the provisions of this subsection shall be distributed as follows:

(i) Twenty-five Dollars (\$25.00) shall be deposited into the State General Fund in accordance with Section 45-1-23;

(ii) Twenty-five Dollars (\$25.00) shall be paid to the Board of Trustees of the Public Employees' Retirement System for funding the Mississippi Highway Safety Patrol Retirement System as provided under Section 25-13-7;

(iii) Twenty-five Dollars (\$25.00) shall be deposited into the special fund created in Section 63-1-45(3) for purchases of equipment by the Mississippi Highway Safety Patrol; and

(iv) Twenty-five Dollars (\$25.00) shall be deposited into the Interlock Device Fund created in Section 63-11-33.

(2)(a) A fee of One Hundred Seventy-five Dollars (\$175.00) shall be charged for the reinstatement of a license issued under this article to every person whose license has been validly suspended or revoked under the provisions of the Mississippi Implied Consent Law or as a result of a conviction of a violation of the Uniform Controlled Substances Law under the provisions of Section 63-1-71.

(b) The funds received under the provisions of this subsection shall be distributed as follows:

(i) One Hundred Dollars (\$100.00) shall be deposited into the State General Fund in accordance with Section 45-1-23;

(ii) Twenty-five Dollars (\$25.00) shall be paid to the Board of Trustees of the Public Employees' Retirement System for funding the Mississippi Highway Safety Patrol Retirement System as provided under Section 25-13-7;

(iii) Twenty-five Dollars (\$25.00) shall be deposited into the special fund created in Section 63-1-45(3) for purchases of equipment by the Mississippi Highway Safety Patrol; and

(iv) Twenty-five Dollars (\$25.00) shall be deposited into the Interlock Device Fund created in Section 63-11-33.

(3) A fee of Twenty-five Dollars (\$25.00) shall be charged for the reinstatement of a license issued under this article to every person whose license has been validly suspended for nonpayment of child support under the provisions of Sections 93-11-151 through 93-11-163. The funds received under the provisions of this subsection shall be deposited into the State General Fund in accordance with Section 45-1-23.

(4) The procedure for the reinstatement of a license issued under this article that has been suspended for being out of compliance with an order for support, as defined in Section 93-11-153, and the payment of any fees for the reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

(5) All reinstatement fees charged under this section shall be in addition to the fee provided for application for a driver's license in Section 63-1-43.

**[From and after October 1, 2014, this section shall read as follows:]**

(1)(a) Except as otherwise provided in this section, a fee of One Hundred Dollars (\$100.00) shall be charged for the reinstatement of a license issued under this article to every person whose license has been validly suspended, revoked or cancelled.

(b) The funds received under the provisions of this subsection shall be distributed as follows:

(i) Twenty-five Dollars (\$25.00) shall be deposited into the State General Fund in accordance with Section 45-1-23;

(ii) Twenty-five Dollars (\$25.00) shall be paid to the Board of Trustees of the Public Employees' Retirement System for funding the Mississippi Highway Safety Patrol Retirement System as provided under Section 25-13-7;

(iii) Twenty-five Dollars (\$25.00) shall be deposited into the special fund created in Section 63-1-45(3) for purchases of equipment by the Mississippi Highway Safety Patrol; and

(iv) Twenty-five Dollars (\$25.00) shall be deposited into the Interlock Device Fund created in Section 63-11-33.

(2)(a) A fee of One Hundred Seventy-five Dollars (\$175.00) shall be charged for the reinstatement of a license issued under this article to every person whose license has been validly suspended or revoked under the provisions of the Mississippi Implied Consent Law or as a result of a conviction of a violation of the Uniform Controlled Substances Law under the provisions of Section 63-1-71.

(b) The funds received under the provisions of this subsection shall be distributed as follows:

(i) One Hundred Dollars (\$100.00) shall be deposited into the State General Fund in accordance with Section 45-1-23;

(ii) Twenty-five Dollars (\$25.00) shall be paid to the Board of Trustees of the Public Employees' Retirement System for funding the Mississippi Highway Safety Patrol Retirement System as provided under Section 25-13-7;

(iii) Twenty-five Dollars (\$25.00) shall be deposited into the special fund created in Section 63-1-45(3) for purchases of equipment by the Mississippi Highway Safety Patrol; and

(iv) Twenty-five Dollars (\$25.00) shall be deposited into the Interlock Device Fund created in Section 63-11-33.

(3)(a) A fee of Twenty-five Dollars (\$25.00) shall be charged for the reinstatement of a license issued under this article to every person whose license has been validly suspended for nonpayment of child support under the provisions of Sections 93-11-151 through 93-11-163. The funds received under the provisions of this subsection shall be deposited into the State General Fund in accordance with Section 45-1-23.

(b) The procedure for the reinstatement of a license issued under this article that has been suspended for being out of compliance with an order for support, as defined in Section 93-11-153, and the payment of any fees for the



reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

(4) A fee of Twenty-five Dollars (\$25.00) will be charged for the reinstatement of a license that was suspended due to payment by a draft or other instrument that is dishonored by the payor.

(5) All reinstatement fees charged under this section shall be in addition to the fees prescribed in Section 63-1-43.

**SOURCES:** Laws, 1980, ch. 335; Laws, 1985, ch. 376, § 18; Laws, 1989, ch. 501, § 1; Laws, 1991, ch. 468 § 3; Laws, 1996, ch. 507, § 11; Laws, 2013, ch. 517, § 1; Laws, 2014, ch. 424, § 13; Laws, 2014, ch. 493, § 3, eff from and after July 1, 2014.

**Joint Legislative Committee Note** — Section 3 of Chapter 493, Laws of 2014, effective from and after July 1, 2014 (approved April 16, 2014), amended this section. Section 13 of Chapter 424, Laws of 2014, effective from and after October 1, 2014 (approved March 24, 2014), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 24, 2014, meeting of the Committee.

**Amendment Notes** — The first 2014 amendment (ch. 424), effective October 1, 2014, added (4); redesignated former (4) as present (3)(b); and in (5), substituted “prescribed” for “provided for application for a driver’s license” and made a minor stylistic change.

The second 2014 amendment (ch. 493), effective July 1, 2014, in (1)(b)(iv) and (2)(b)(iv), deleted “Ignition” preceding “Interlock Device Fund” and substituted “Section 63-11-33” for “Section 63-1-43 by Chapter 489, Laws of 2013.”

## **§ 63-1-47. Duration and expiration of licenses; release of applicant’s school attendance records to department of public safety; suspension of license of certain students who drop out of school.**

**[Until October 1, 2014, this section shall read as follows:]**

(1) Except as otherwise provided in this section, each applicant for an original license issued pursuant to this article, who is entitled to issuance of same, shall be issued a four-year license or an eight-year license, at the option of the applicant, which will expire at midnight on the licensee’s birthday.

(a) Except as otherwise provided in this section, all renewal licenses shall be for a four-year period or an eight-year period, at the option of the applicant, and may be renewed any time within six (6) months before the expiration of the license upon application and payment of the required fee, unless required to be reexamined.

(b) From and after January 1, 1990, no commercial driver’s license shall be issued under the provisions of this article for any commercial motor vehicle, the lawful operation of which requires the driver to obtain a Class A,

B or C commercial driver's license under Article 5 of this chapter; however, from time to time, the holder of a commercial license may apply for a commercial driver's license under Article 5 of this chapter; and, if he fails to pass the required test for such license, he shall be entitled to an extension of his license that shall be valid for one hundred twenty (120) days or until he again is tested under Article 5 of this chapter, whichever occurs first. The extension shall entitle the license holder to operate all vehicles which such license authorized him to operate prior to taking the required test. The first extension shall be without charge; however, a fee of Fifteen Dollars (\$15.00) shall be imposed for any subsequent extension. No extension shall be valid past March 31, 1992.

(2) Any commercial driver's license issued under this article before January 1, 1990, which expires after March 31, 1992, shall be void on April 1, 1992, for the operation of any commercial vehicle requiring a commercial license to be issued under Article 5 of this chapter; however, if the holder of any such license applies for a commercial driver's license under Article 5 of this chapter, passes the required tests for such license, pays all applicable fees under Article 5 of this chapter except the Forty Dollars (\$40.00) license fee and otherwise meets all requirements for the issuance of such license, then such person shall be issued a license under Article 5 of this chapter which shall expire on the expiration date of the commercial driver's license being replaced.

(3) The fee for the issuance of an original and renewals of a Class D commercial driver's license under this article to an applicant who is not a United States citizen and who does not possess a social security number issued by the United States government and the period for which such license will be valid and expire shall be as prescribed in Section 63-1-43.

(4) The Commissioner of Public Safety shall notify, by United States mail addressed to the last-known address of record with the Department of Public Safety, all holders of a commercial driver's license issued under this article before January 1, 1990, and which expires after March 31, 1992, that such license will be void on and after April 1, 1992, for the operation of any vehicle for which a commercial driver's license is required to be issued under Article 5 of this chapter.

(5) Any person holding a valid commercial driver's license issued under this article before January 1, 1990, shall continue thereafter, until expiration of such license, to be entitled to operate all vehicles which such license authorized him to operate immediately before January 1, 1990, except that from and after April 1, 1992, such license shall not entitle the licensee to operate a commercial motor vehicle the lawful operation of which requires a commercial driver's license under Article 5 of this chapter.

(6)(a) All applications by an operator under eighteen (18) years of age must be accompanied by documentation that the applicant is in compliance with the education requirements of Section 63-1-9(1) (g), and the documentation used in establishing compliance must be dated no more than thirty (30) days prior to the date of application.

(b) All applications by an operator under eighteen (18) years of age, if applicable, must be accompanied by documentation signed and notarized by



the parent or guardian of the applicant and the appropriate school official, authorizing the release of the applicant's attendance records to the Department of Public Safety as required under Section 63-1-10.

(c) The commissioner shall suspend the driver's license, intermediate license or temporary learning permit of a student under eighteen (18) years of age who has been reported by the Department of Education as required by Section 63-1-10.1, and shall give notice of the suspension to the licensee as provided in Section 63-1-52(4). A school superintendent or designee may request that the driver's license, intermediate license or temporary learning permit that has been suspended under the provisions of this subsection be reinstated after the student has successfully completed nine (9) weeks of school attendance without an unlawful absence.

(7)(a) Any original or renewal license issued under this article to a person who is not a United States citizen and who does not possess a social security number issued by the United States government shall expire four (4) years from the date of issuance or on the expiration date of the applicant's authorized stay in the United States, whichever is the lesser period of time, and may be renewed, if the person is otherwise qualified to renew the license, within thirty (30) days of expiration. The fee for any such license and for renewal shall be as prescribed in Section 63-1-43.

(b) Any applicant for an original or renewal license under this subsection (7) must present valid documentary evidence documenting that the applicant:

- (i) Is a citizen or national of the United States;
- (ii) Is an alien lawfully admitted for permanent or temporary residence in the United States;
- (iii) Has conditional permanent residence status in the United States;
- (iv) Has approved application for asylum in the United States or has entered into the United States in refugee status;
- (v) Has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into or lawful presence in the United States;
- (vi) Has a pending application for asylum in the United States;
- (vii) Has a pending or approved application for temporary protected status in the United States;
- (viii) Has approved deferred action status;
- (ix) Has pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States; or
- (x) Has a valid employment authorization card issued by the United States Department of Homeland Security.

(8) The term of an ignition-interlock-restricted driver's license issued pursuant to this article shall be four (4) years.

**[From and after October 1, 2014, this section shall read as follows:]**

(1)(a) Except as otherwise provided in this section, each applicant for an original or renewal Class R or Class D license issued pursuant to this article,

who is entitled to issuance of same, shall be issued a four-year license or an eight-year license, at the option of the applicant, which will expire at midnight on the licensee's birthday and may be renewed any time within six (6) months before the expiration of the license upon application and payment of the required fee, unless required to be reexamined.

(b) The term of an intermediate license issued under this article shall be one (1) year.

(c) The term of an ignition-interlock-restricted license issued under this article shall be four (4) years.

(2) Any commercial driver's license issued under Article 5 of this chapter shall be issued for a five-year term to expire at midnight on the licensee's birthday.

(3)(a) All applications by an operator under eighteen (18) years of age must be accompanied by documentation that the applicant is in compliance with the education requirements of Section 63-1-9(1)(g), and the documentation used in establishing compliance must be dated no more than thirty (30) days before the date of application.

(b) All applications by an operator under eighteen (18) years of age, if applicable, must be accompanied by documentation signed and notarized by the parent or guardian of the applicant and the appropriate school official, authorizing the release of the applicant's attendance records to the Department of Public Safety as required under Section 63-1-10.

(c) The commissioner shall suspend the driver's license, intermediate license or regular learner's permit of a student under eighteen (18) years of age who has been reported by the Department of Education as required by Section 63-1-10.1, and shall give notice of the suspension to the licensee as provided in Section 63-1-52(4). A school superintendent or designee may request that the driver's license, intermediate license or regular learner's permit that has been suspended under the provisions of this subsection be reinstated after the student has successfully completed nine (9) weeks of school attendance without an unlawful absence.

(4)(a) Any original or renewal license issued under this chapter to a person who is not a United States citizen shall expire four (4) years from the date of issuance or on the expiration date of the applicant's authorized stay in the United States, whichever is the lesser period of time, and may be renewed, if the person is otherwise qualified to renew the license, within thirty (30) days of expiration. The fee for any such license and for renewal shall be as prescribed in Section 63-1-43.

(b) Any applicant for an original or renewal license under this subsection (4) must present valid documentary evidence documenting that the applicant:

- (i) Is a citizen or national of the United States;
- (ii) Is an alien lawfully admitted for permanent or temporary residence in the United States;
- (iii) Has conditional permanent residence status in the United States;



- (iv) Has an approved application for asylum in the United States or has entered into the United States in refugee status;
- (v) Has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into or lawful presence in the United States;
- (vi) Has a pending application for asylum in the United States;
- (vii) Has a pending or approved application for temporary protected status in the United States;
- (viii) Has approved deferred-action status;
- (ix) Has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States; or
- (x) Has a valid employment authorization card issued by the United States Department of Homeland Security.

**SOURCES:** Codes, 1942, § 8114; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1946, ch. 420, § 8; Laws, 1948, ch. 343, § 6; Laws, 1956, ch. 378, § 5; Laws, 1958, ch. 509; Laws, 1968, ch. 541, § 1; Laws, 1981, ch. 453, § 3; Laws, 1985, ch. 376, § 19; Laws, 1989, ch. 482, § 24; Laws, 1990, ch. 310, § 1; Laws, 1994, ch. 588, § 7; Laws, 2000, ch. 624, § 5; Laws, 2002, ch. 584, § 4; Laws, 2009, ch. 488, § 4; Laws, 2009, ch. 560, § 31; Laws, 2010, ch. 423, § 2; Laws, 2011, ch. 468, § 1; Laws, 2013, ch. 489, § 5; Laws, 2014, ch. 424, § 14, eff from and after Oct. 1, 2014.

**Amendment Notes** — The 2014 amendment redesignated former (1) as present (1)(a) and inserted “or renewal Class R or Class D” following “each applicant for an original”; deleted “Except as otherwise provided in this section, all renewal licenses shall be for a four-year period or an eight-year period, at the option of the applicant,” from the beginning of former (1)(a); added (1)(b) and (1)(c); in (2), deleted “this” following “commercial driver’s license issued under” at the beginning; and substituted “5 of this chapter shall be issued for a five-year term to expire at midnight on the licensee’s birthday” for the remainder of this subsection; deleted (3), (4), and (5) and redesignated the remaining subsections accordingly; in present (3)(a), substituted “before” for “prior to” at the end; in present (3)(c), substituted “regular learner’s” for “temporary learning” twice; in present (4)(a), substituted “chapter” for “article” and deleted “and who does not possess a social security number issued by the United States government” following “who is not a United States citizen”; in present (4)(b), in the parentheses, substituted “4” for “7”; and deleted former (8) in its entirety regarding the term of an ignition-interlock-restricted driver’s license.

## § 63-1-49. Renewal of licenses.

**[Until October 1, 2014, this section shall read as follows:]**

(1) An expired license issued pursuant to this article may be renewed at any time within twelve (12) months after the expiration date of said license upon application and payment of the required fee, and the payment of a delinquent fee of One Dollar (\$1.00), in lieu of a driver examination, unless the holder of the expired license is required to be examined, or unless the department has reason to believe the licensee is no longer qualified to receive a license. If any person shall obtain a new license, his last previous license having been good and valid, except for its lapsing, without his having obtained

a renewal within the time required by law, then such reissuance of a license shall constitute a renewal of the previous license and not a new license.

(2)(a) Any person in the armed services of the United States, holding a valid license issued pursuant to this article and being out of state due to military service at the time the license expires, may renew the license by mail or by on-line renewal services or at any time within ninety (90) days after being discharged from such military service or upon returning to the state, without payment of any delinquent fee or examination, unless the department has reason to believe that the licensee is no longer qualified to receive a license. Such person shall make proof by affidavit of the fact of such military service and of the time of discharge or return. The expiration of the license of a military person under the provisions of this paragraph (a) shall not affect the validity of the license, but such license shall continue to be valid and permit such person to operate a motor vehicle for a period of ninety (90) days after he is discharged from military service or returns to the state or until he renews his license, whichever event first occurs.

(b) The provisions of paragraph (a) of this subsection (2) also apply to a dependent of a person in the armed services of the United States who is out of state due to military service if the dependent resides out of state with the armed services member and the license of the dependent expires during his or her absence from the state. The Commissioner of Public Safety may adopt such rules and regulations as may be necessary to implement the provisions of this paragraph.

(3) Any person holding a valid license issued pursuant to this article who is going overseas for two (2) to four (4) years and whose license shall expire during the stay overseas may renew said license for four (4) years prior to leaving. Said person shall make proof by affidavit of the fact of such overseas travel. Such reissuance of a license shall constitute a renewal of the previous license and not a new license.

**[From and after October 1, 2014, this section shall read as follows:]**

(1) An expired license issued pursuant to this article may be renewed at any time within eighteen (18) months after the expiration date of the license upon application and payment of the required fee, and the payment of a delinquent fee prescribed in Section 63-1-43, in lieu of a driver examination, unless the holder of the expired license is required to be examined, or unless the department has reason to believe the licensee is no longer qualified to receive a license.

(2)(a) Any person in the Armed Services of the United States, who holds a valid license issued pursuant to this chapter and is out of state due to military service at the time the license expires, may renew the license by mail or by online renewal services while out of state due to military service or at any time within ninety (90) days after being discharged from military service or upon returning to the state without payment of any delinquent fee or examination, unless the department has reason to believe that the licensee is no longer qualified to receive a license. The person shall make



proof by affidavit of the fact of the person's current military service or of the time of discharge or return. The expiration of the license of a military person under the provisions of this paragraph (a) shall not affect the validity of the license, but the license shall continue to be valid and permit the person to operate a motor vehicle in this state for a period of ninety (90) days after discharge from military service or return to the state or until renewal of the license, whichever occurs first.

(b) The provisions of paragraph (a) of this subsection (2) also apply to a dependent of a person in the armed services of the United States who is out of state due to military service if the dependent resides out of state with the armed services member and the license of the dependent expires during the family member's absence from the state. The Commissioner of Public Safety may adopt such rules and regulations under the Administrative Procedures Act as may be necessary to implement the provisions of this paragraph.

(3) Any person holding a valid license issued pursuant to this article who is going overseas for two (2) to four (4) years and whose license will expire during the stay overseas may renew the license for four (4) years or eight (8) years before leaving. The person shall make proof by affidavit of the fact of the overseas travel.

**SOURCES:** Codes, 1942, §§ 8102, 8114; Laws, 1938, ch. 143; Laws, 1940, chs. 157, 167; Laws, 1946, ch. 420, §§ 7, 8; Laws, 1948, ch. 343, §§ 5, 6; Laws, 1950, ch. 408, § 1; Laws, 1956, ch. 378, §§ 3, 5; Laws, 1958, chs. 493, 509; Laws, 1962, ch. 523; Laws, 1968, ch. 539, § 1; Laws, 1968, ch. 541, § 1; Laws, 1985, ch. 376, § 20; Laws, 1991, ch. 328 § 1; Laws, 1998, ch. 339, § 1; Laws, 2002, ch. 395, § 1; Laws, 2005, ch. 407, § 1; Laws, 2014, ch. 424, § 15, eff from and after Oct. 1, 2014.

**Amendment Notes** — The 2014 amendment, in (1), in the first sentence, substituted “eighteen (18)” for “twelve (12)”, “the” for “said”, and “prescribed in Section 63-1-43” for “of One Dollar (\$1.00)” and deleted the last sentence in its entirety regarding a new license constituting a renewal of the previous license; in (2)(a), in the first sentence, deleted “such” following “after being discharged from”, a comma following “upon returning to the state”, and inserted “while out of state due to military service” following “by mail or by online renewal services”; in the last sentence deleted “event first” following “license, whichever”, inserted “in this state” following “person to operate a motor vehicle”, and “first” following “occurs”; substituted “who holds” for “holding”, “chapter” for “article”, “is” for “being”, “The” for “Such”, “the person's current” for “such”, “or” for “and”, “the” for “such” twice, “discharge” for “he is discharged”, and “renewal of the” for “he renews his”; in (2)(b), substituted “the family member's” for “his or her” and inserted “under the Administrative Procedures Act” following “adopt such rules and regulations”; in (3), deleted the last sentence, which read “Such reissuance of a license shall constitute a renewal of the previous license and not a new license.”; substituted “will” for “shall”, “the” for “said” twice, “before” for “prior to”, and “the” for “such”, and inserted “or eight (8) years” following “for four (4) years.”

## ARTICLE 5.

## COMMERCIAL DRIVER'S LICENSE ACT.

SEC.

- 63-1-208. Commercial driver's license qualification standards.  
63-1-210. Application for commercial driver's license.  
63-1-211. Commercial driver's license.

**§ 63-1-208. Commercial driver's license qualification standards.****[Until October 1, 2014, this section shall read as follows:]**

(1) Except as otherwise provided, the commissioner shall not issue a commercial driver's license and commercial learner's permit to any person under the age of twenty-one (21) years.

(2) No person may be issued a commercial driver's license unless that person is domiciled in this state and has passed a knowledge and skills test for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulation enumerated in 49 CFR, Part 383, subparts F, G and H and has satisfied all other requirements of Title XII of Public Law 99-570 in addition to other requirements imposed by state law or federal regulation. The tests shall be prescribed and conducted by the commissioner. If the applicant wishes to have a hazardous materials endorsement, the written test for a hazardous materials endorsement must be taken and passed. In addition, the applicant must successfully complete the security threat assessment required by 49 CFR, Part 1572.

(3) The commissioner may authorize a person, including an agency of this or another state, an employer, a private driver training facility, or other private institution, or a department, agency or instrumentality of local government, to administer the skills test specified by this section, provided:

(a) The test is the same as would otherwise be administered by the state; and

(b) The third party has entered into an agreement with this state which complies with requirements of 49 CFR, Part 383.75.

(4) A skills test may be waived as follows:

(a) The commissioner, by rules adopted pursuant to the Mississippi Administrative Procedures Law, may provide for a waiver of the skills test specified in this section for a commercial driver's license applicant who meets the requirements of 49 CFR, Part 383.77;

(b) The rules may establish deadlines by which applicants must claim entitlement and qualification to skills test waivers and may provide for the scheduling of group knowledge testing.

(5) A commercial learner's permit shall be issued as follows:

(a) A commercial learner's permit may be issued to an individual who holds a valid driver's license from any jurisdiction who has passed the vision and written tests required for the class of license authorizing the operation of the type of vehicle for which the permit application is being made;



(b) The commercial learner's permit shall be issued for a period of six (6) months for a fee of Twelve Dollars (\$12.00). Only one (1) renewal or reissuance may be granted within a two-year period. The holder of a commercial learner's permit may, unless otherwise disqualified, drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle.

(6) A commercial driver's license, or commercial learner's permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked or cancelled in any state. A driver's license may not be issued to a person who has a commercial driver's license issued by any state unless the person first surrenders all driver's licenses issued by any state, which licenses shall be returned to the issuing states for cancellation.

(7) A person shall be entitled to take the test for a commercial driver's license unless the person's driver's license is, at the time of the requested test, suspended, revoked, cancelled or disqualified in any other state.

(8) Notwithstanding any requirement imposed by state law or state or federal regulations restricting the issuance of a commercial driver's license to a person suffering from diabetes, a person suffering from diabetes may be issued a commercial driver's license if the person otherwise meets all qualifications for issuance provided:

(a) The driver is physically examined every year, including an examination by a board-certified/eligible endocrinologist attesting to the fact that the driver is:

(i) Free of insulin reactions (an individual is free of insulin reactions if that individual does not have severe hypoglycemia or hypoglycemia unawareness, and has less than one (1) documented, symptomatic hypoglycemic reaction per month);

(ii) Able to and has demonstrated willingness to properly monitor and manage the person's diabetes; and

(iii) Not likely to suffer any diminution in driving ability due to the person's diabetic condition.

(b) The driver agrees to and complies with the following conditions:

(i) A source of rapidly absorbable glucose shall be carried at all times while driving;

(ii) Blood glucose levels shall be self-monitored one (1) hour prior to driving and at least once every four (4) hours while driving or on duty prior to driving using a portable glucose monitoring device equipped with a computerized memory;

(iii) Submit blood glucose logs to the endocrinologist or medical examiner at the annual examination or when otherwise directed by the Department of Public Safety;

(iv) Provide a copy of the endocrinologist's report to the medical examiner at the time of the annual medical examination; and

(v) Provide a copy of the annual medical certification to the person's employer for retention in the driver's qualification file and retain a copy of the certification on his person while driving for presentation to a duly authorized federal, state or local enforcement official.

(c) The commercial license issued under this subsection (8) will bear an endorsement restricting commercial driving on the license to driving only within the boundaries of Mississippi.

**[From and after October 1, 2014, this section shall read as follows:]**

(1) Except as otherwise provided, the commissioner shall not issue a commercial driver's license and commercial learner's permit to any person under the age of twenty-one (21) years.

(2) No person may be issued a commercial driver's license unless that person is domiciled in this state and has passed a knowledge and skills test for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulation enumerated in 49 CFR, Part 383, subparts F, G and H and has satisfied all other requirements of Title XII of Public Law 99-570 in addition to other requirements imposed by state law or federal regulation. The tests shall be prescribed and conducted by the commissioner. If the applicant wishes to have a hazardous materials endorsement, the written test for a hazardous materials endorsement must be taken and passed. In addition, the applicant must successfully complete the security threat assessment required by 49 CFR, Part 1572.

(3) The commissioner may authorize a person, including an agency of this or another state, an employer, a private driver training facility, or other private institution, or a department, agency or instrumentality of local government, to administer the skills test specified by this section, provided:

(a) The test is the same as would otherwise be administered by the state; and

(b) The third party has entered into an agreement with this state which complies with requirements of 49 CFR, Part 383.75.

(4) A skills test may be waived as follows:

(a) The commissioner, by rules adopted pursuant to the Mississippi Administrative Procedures Law, may provide for a waiver of the skills test specified in this section for a commercial driver's license applicant who meets the requirements of 49 CFR, Part 383.77;

(b) The rules may establish deadlines by which applicants must claim entitlement and qualification to skills test waivers and may provide for the scheduling of group knowledge testing.

(5) A commercial learner's permit shall be issued as follows:

(a) A commercial learner's permit may be issued to an individual who holds a valid Mississippi driver's license who has passed the vision and written tests required for the class of license authorizing the operation of the type of vehicle for which the permit application is being made;

(b) The commercial learner's permit shall be issued for a period of six (6) months for the fee prescribed in Section 63-1-43. Only one (1) renewal or



reissuance may be granted within a two-year period. The holder of a commercial learner's permit may, unless otherwise disqualified, drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle.

(6) A commercial driver's license or commercial learner's permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked or cancelled in any state. A driver's license may not be issued to a person who has a commercial driver's license issued by any state unless the person first surrenders all driver's licenses issued by any state, which licenses shall be returned to the issuing states for cancellation.

(7) A person shall be entitled to take the test for a commercial driver's license unless the person's driver's license is, at the time of the requested test, suspended, revoked, cancelled or disqualified in any other state.

(8) Notwithstanding any requirement imposed by state law or state or federal regulations restricting the issuance of a commercial driver's license to a person suffering from diabetes, a person suffering from diabetes may be issued a commercial driver's license if the person otherwise meets all qualifications for issuance provided:

(a) The driver is physically examined every year, including an examination by a board-certified/eligible endocrinologist attesting to the fact that the driver is:

(i) Free of insulin reactions (an individual is free of insulin reactions if that individual does not have severe hypoglycemia or hypoglycemia unawareness, and has less than one (1) documented, symptomatic hypoglycemic reaction per month);

(ii) Able to and has demonstrated willingness to properly monitor and manage the person's diabetes; and

(iii) Not likely to suffer any diminution in driving ability due to the person's diabetic condition.

(b) The driver agrees to and complies with the following conditions:

(i) A source of rapidly absorbable glucose shall be carried at all times while driving;

(ii) Blood glucose levels shall be self-monitored one (1) hour prior to driving and at least once every four (4) hours while driving or on duty prior to driving using a portable glucose monitoring device equipped with a computerized memory;

(iii) Submit blood glucose logs to the endocrinologist or medical examiner at the annual examination or when otherwise directed by the Department of Public Safety;

(iv) Provide a copy of the endocrinologist's report to the medical examiner at the time of the annual medical examination; and

(v) Provide a copy of the annual medical certification to the person's employer for retention in the driver's qualification file and retain a copy of

the certification on his person while driving for presentation to a duly authorized federal, state or local enforcement official.

(c) The commercial license issued under this subsection (8) will bear an endorsement restricting commercial driving on the license to driving only within the boundaries of Mississippi.

(9) The fees for all licenses, permits, renewals and endorsements shall be as prescribed in Section 63-1-43.

**SOURCES:** Laws, 2009, ch. 560, § 8; Laws, 2014, ch. 424, § 16, eff from and after Oct. 1, 2014.

**Amendment Notes** — The 2014 amendment, in (5)(a), deleted “from any jurisdiction” following “driver’s license” and inserted “Mississippi” following “individual who holds a valid”; in the first sentence of (5)(b), substituted “the” for “a” and “prescribed in Section 63-1-43” for “of Twelve Dollars (\$12.00)”; in the first sentence of (6), deleted the comma following “A commercial driver’s license”; and added (9).

### § 63-1-210. Application for commercial driver’s license.

**[Until October 1, 2014, this section shall read as follows:]**

(1) The application for a commercial driver’s license or commercial learner’s permit shall include the following:

(a) The full name and current mailing and residential addresses of the person.

(b) A physical description of the person, including sex, height and weight.

(c) Date of birth.

(d) The applicant’s social security number.

(e) The person’s signature.

(f) Certifications that:

(i) For an applicant who operates or expects to operate in interstate or foreign commerce or who is otherwise subject to 49 CFR, Part 391, the applicant meets the qualification requirements contained in Part 391; or for an applicant who operates or expects to operate entirely in intrastate commerce and who is not subject to Part 391, that the applicant is subject to state driver qualification requirements and is not subject to Part 391;

(ii) The motor vehicle in which the applicant’s skills test will be taken is representative of the type of motor vehicle that the applicant operates or expects to operate;

(iii) The applicant is not subject to any disqualification under 49 CFR, Part 385.51, or any license suspension, revocation, or cancellation under state law; and

(iv) The applicant does not have a driver’s license from more than one (1) state or jurisdiction.

(g) Any other information required by the commissioner, including, but not limited to, the names of all states or jurisdictions where the applicant has been licensed to operate any type of motor vehicle during the previous ten (10) years.



(h) The application shall be accompanied by a fee of Twenty-five Dollars (\$25.00).

(2) When a licensee or permittee changes his or her name, mailing address, or residence or in the case of the loss, mutilation, or destruction of a license or permit, the licensee or permittee shall forthwith notify the commissioner and apply in person for a duplicate license or permit in the same manner as set forth in subsection (1) of this section. The fee for a duplicate license or permit shall be Six Dollars (\$6.00).

(3) A person who has been a resident of this state for more than thirty (30) days shall not drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.

(4) Any person who knowingly falsifies information or certifications required under subsection (1) of this section shall have the person's commercial driver's license revoked. Such persons may reapply for a commercial driver's license no sooner than sixty (60) days after the revocation.

(5)(a) Any male who is at least eighteen (18) years of age but less than twenty-six (26) years of age and who applies for or renews a commercial driver's license or renewal of a commercial learner's permit under this article shall be registered in compliance with the requirements of Section 3 of the Military Selective Service Act, 50 USCS Appx. 451 et seq., as amended.

(b) The department shall forward in an electronic format the necessary personal information of the applicant to the Selective Service System. The applicant's submission of the application shall serve as an indication that the applicant either has already registered with the Selective Service System or that he is authorizing the department to forward to the Selective Service System the necessary information for registration. The commissioner shall notify the applicant on, or as a part of, the application that his submission of the application will serve as his consent to registration with the Selective Service System, if so required. The commissioner also shall notify any male applicant under the age of eighteen (18) that he will be registered upon turning age eighteen (18) as required by federal law.

**[From and after October 1, 2014, this section shall read as follows:]**

(1) The application for a commercial driver's license or commercial learner's permit shall include the following:

(a) The full name and current mailing and residential addresses of the person.

(b) A physical description of the person, including sex, height and weight.

(c) Date of birth.

(d) The applicant's social security number.

(e) The person's signature.

(f) Certifications that:

(i) For an applicant who operates or expects to operate in interstate or foreign commerce or who is otherwise subject to 49 CFR, Part 391, the applicant meets the qualification requirements contained in Part 391; or



for an applicant who operates or expects to operate entirely in intrastate commerce and who is not subject to Part 391, that the applicant is subject to state driver qualification requirements and is not subject to Part 391;

(ii) The motor vehicle in which the applicant's skills test will be taken is representative of the type of motor vehicle that the applicant operates or expects to operate;

(iii) The applicant is not subject to any disqualification under 49 CFR, Part 385.51, or any license suspension, revocation, or cancellation under state law; and

(iv) The applicant does not have a driver's license from more than one (1) state or jurisdiction.

(g) Any other information required by the commissioner, including, but not limited to, the names of all states or jurisdictions where the applicant has been licensed to operate any type of motor vehicle during the previous ten (10) years.

(h) The application shall be accompanied by a fee as prescribed in Section 63-1-43.

(2) When a licensee or permittee changes his or her name, mailing address, or residence or in the case of the loss, mutilation, or destruction of a license or permit, the licensee or permittee shall notify the commissioner within sixty (60) days and apply in person for a duplicate license or permit in the same manner as set forth in subsection (1) of this section. The fee for a duplicate license or permit shall be as prescribed in Section 63-1-43.

(3) A person who has been a resident of this state for more than thirty (30) days shall not drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.

(4) Any person who knowingly falsifies information or certifications required under subsection (1) of this section shall have the person's commercial driver's license revoked. Such persons may reapply for a commercial driver's license no sooner than sixty (60) days after the revocation.

(5)(a) Any male who is at least eighteen (18) years of age but less than twenty-six (26) years of age and who applies for or renews a commercial driver's license or renewal of a commercial learner's permit under this article shall be registered in compliance with the requirements of Section 3 of the Military Selective Service Act, 50 USCS Appx. 451 et seq., as amended.

(b) The department shall forward in an electronic format the necessary personal information of the applicant to the Selective Service System. The applicant's submission of the application shall serve as an indication that the applicant either has already registered with the Selective Service System or that he is authorizing the department to forward to the Selective Service System the necessary information for registration. The commissioner shall notify the applicant on, or as a part of, the application that his submission of the application will serve as his consent to registration with the Selective Service System, if so required. The commissioner also shall notify any male applicant under the age of eighteen (18) that he will be registered upon turning age eighteen (18) as required by federal law.

**SOURCES:** Laws, 2009, ch. 560, § 10; Laws, 2014, ch. 424, § 17, eff from and after Oct. 1, 2014.

**Amendment Notes** — The 2014 amendment, in (1)(h), substituted “as prescribed in Section 63-1-43” for “of Twenty-five Dollars (\$25.00)”; in (2), deleted “forthwith” following “the licensee or permittee shall”; and inserted “within sixty (60) days” following “notify the commissioner” in the first sentence; and substituted “as prescribed in Section 63-1-43” for “Six Dollars (\$6.00)” at the end of the last sentence.

## § 63-1-211. Commercial driver's license.

**[Until October 1, 2014, this section shall read as follows:]**

(1) **Contents of license.** — A commercial driver's license shall be marked “commercial driver's license” or “CDL,” and shall be, to the maximum extent practicable, tamper proof, and shall include, but not be limited to, the following information:

- (a) The name and residential address of the person.
- (b) The person's color photograph or imaged likeness.
- (c) A physical description of the person including sex, height, and weight.
- (d) Date of birth.
- (e) Any number or identifier deemed appropriate by the commissioner.
- (f) The person's signature.
- (g) The class or type of commercial motor vehicle or vehicles which the person is authorized to drive together with any endorsements or restrictions.
- (h) The name of this state.
- (i) The dates between which the license is valid.

(2) **Classifications, endorsements and restrictions.** — Driver's licenses may be issued with the following classifications, endorsements, and restrictions:

(a) **Classifications.** — Licensees may drive all vehicles in the class for which the license is issued and all lesser classes of vehicles, except those requiring special endorsements.

(i) **Class A** — Any combination of vehicles with a gross vehicle weight rating of twenty-six thousand one (26,001) pounds or more, provided the gross vehicle weight rating of the vehicle being towed is in excess of ten thousand (10,000) pounds.

(ii) **Class B** — Any single vehicle with a gross vehicle weight rating of twenty-six thousand one (26,001) pounds or more, and any such vehicle towing a vehicle not in excess of ten thousand (10,000) pounds.

(iii) **Class C** — Any single vehicle with a gross vehicle weight rating of less than twenty-six thousand one (26,001) pounds:

1. Vehicles designed to transport sixteen (16) or more passengers, including the driver; and

2. Vehicles used in the transportation of hazardous materials as defined in Section 63-1-203.

(iv) **Class D** — Any single vehicle with a gross vehicle weight rating of less than twenty-six thousand one (26,001) pounds or any such vehicle

towing a vehicle with a gross vehicle weight rating not in excess of ten thousand (10,000) pounds except vehicles included in Class C or vehicles which require a special endorsement unless the proper endorsement appears on the license. Class D licenses shall not be commercial driver's licenses.

(b) Licenses may be issued with appropriate endorsements and restrictions noted thereon. The commissioner shall determine the manner of notation. Endorsements and restrictions may include, but are not limited to, those which:

(i) Authorize a driver to drive a vehicle transporting hazardous materials;

(ii) Restrict the driver to vehicles not equipped with air brakes when the person either fails the air brake component of the knowledge test or performs the skills test in a vehicle not equipped with air brakes;

(iii) Authorize driving motorcycles;

(iv) Authorize driving tank vehicles;

(v) Authorize driving vehicles carrying passengers;

(vi) Authorize driving school buses;

(vii) Authorize driving double trailers;

(viii) Restrict the driver to operation solely within this state. A commercial driver's license or commercial learner's permit with this restriction may be issued to any person who has attained the age of eighteen (18) years.

(3) Before issuing a commercial driver's license, the commissioner shall request the applicant's complete operating record from any state in which the applicant was previously licensed to operate any type of motor vehicle in the past ten (10) years, conduct a check of the applicant's operating record by querying the national driver register, established under 49 USCS Section 30302, and the commercial driver's license information system, established under 49 USCS Section 31309, to determine if:

(a) The applicant has already been issued a commercial driver's license; and the applicant's commercial driver's license has been suspended, revoked, or canceled;

(b) The applicant had been convicted of any offenses contained in Section 205(a)(3) of the National Driver Register Act of 1982 (23 USCS Section 401 note).

(4) Within ten (10) days after issuing a commercial driver's license, the commissioner shall notify the commercial driver license information system of that fact, providing all information required to ensure identification of the person.

(5) The commercial driver's license shall expire in the manner set forth in Section 63-1-47.

(6) When applying for renewal of a commercial driver's license, the applicant shall complete the application form required by Section 63-1-210, providing updated information and required certifications. If the applicant wishes to retain a hazardous materials endorsement, the written test for a



hazardous materials endorsement must be taken and passed. In addition, the applicant must successfully complete the security threat assessment required by 49 CFR, Part 1572. If notice is received from the United States Transportation Security Administration that the applicant poses a security risk, the commissioner shall refuse to issue, or revoke within fifteen (15) days of receipt of the notice, a hazardous materials endorsement.

(7) The department shall provide a means for electronic transmission of a medical card and may charge a vendor convenience fee in an amount not to exceed Two Dollars and Fifty Cents (\$2.50) per transmission.

**[From and after October 1, 2014, this section shall read as follows:]**

(1) **Contents of license.** — A commercial driver's license shall be marked "commercial driver's license" or "CDL," and shall be, to the maximum extent practicable, tamper proof, and shall include, but not be limited to, the following information:

- (a) The name and residential address of the person.
- (b) The person's color photograph or imaged likeness.
- (c) A physical description of the person including sex, height, and weight.
- (d) Date of birth.
- (e) Any number or identifier deemed appropriate by the commissioner.
- (f) The person's signature.
- (g) The class or type of commercial motor vehicle or vehicles which the person is authorized to drive together with any endorsements or restrictions.
- (h) The name of this state.
- (i) The dates between which the license is valid.

(2) **Classifications, endorsements and restrictions.** — Driver's licenses may be issued with the following classifications, endorsements, and restrictions:

(a) **Classifications.** — Licensees may drive all vehicles in the class for which the license is issued and all lesser classes of vehicles, except those requiring special endorsements.

(i) **Class A** — Any combination of vehicles with a gross vehicle weight rating of twenty-six thousand one (26,001) pounds or more, provided the gross vehicle weight rating of the vehicle being towed is in excess of ten thousand (10,000) pounds.

(ii) **Class B** — Any single vehicle with a gross vehicle weight rating of twenty-six thousand one (26,001) pounds or more, and any such vehicle towing a vehicle not in excess of ten thousand (10,000) pounds.

(iii) **Class C** — Any single vehicle with a gross vehicle weight rating of less than twenty-six thousand one (26,001) pounds:

1. Vehicles designed to transport sixteen (16) or more passengers, including the driver; and
2. Vehicles used in the transportation of hazardous materials as defined in Section 63-1-203.

(iv) **Class D** — Class D licenses are not commercial driver's licenses and shall be governed by the provisions of Section 63-1-5.

(b) Licenses may be issued with appropriate endorsements and restrictions noted thereon. The commissioner shall determine the manner of notation. Endorsements and restrictions may include, but are not limited to, those which:

(i) Authorize a driver to drive a vehicle transporting hazardous materials;

(ii) Restrict the driver to vehicles not equipped with air brakes when the person either fails the air brake component of the knowledge test or performs the skills test in a vehicle not equipped with air brakes;

(iii) Authorize driving motorcycles;

(iv) Authorize driving tank vehicles;

(v) Authorize driving vehicles carrying passengers;

(vi) Authorize driving school buses;

(vii) Authorize driving double trailers;

(viii) Restrict the driver to operation solely within this state. A commercial driver's license or commercial learner's permit with this restriction may be issued to any person who has attained the age of eighteen (18) years.

(3) Before issuing a commercial driver's license, the commissioner shall request the applicant's complete operating record from any state in which the applicant was previously licensed to operate any type of motor vehicle in the past ten (10) years, conduct a check of the applicant's operating record by querying the national driver register, established under 49 USCS Section 30302, and the Commercial Driver's License Information System, established under 49 USCS Section 31309, to determine if:

(a) The applicant has already been issued a commercial driver's license; and the applicant's commercial driver's license has been suspended, revoked, or canceled;

(b) The applicant had been convicted of any offenses contained in Section 205(a)(3) of the National Driver Register Act of 1982 (23 USCS Section 401 note).

(4) Within ten (10) days after issuing a commercial driver's license, the commissioner shall notify the commercial driver license information system of that fact, providing all information required to ensure identification of the person.

(5) The commercial driver's license shall expire in the manner set forth in Section 63-1-47.

(6) When applying for renewal of a commercial driver's license, the applicant shall complete the application form required by Section 63-1-210, providing updated information and required certifications. If the applicant wishes to retain a hazardous materials endorsement, the written test for a hazardous materials endorsement must be taken and passed. In addition, the applicant must successfully complete the security threat assessment required by 49 CFR, Part 1572. If notice is received from the United States Transportation Security Administration that the applicant poses a security risk, the commissioner shall refuse to issue, or revoke within fifteen (15) days of receipt of the notice, a hazardous materials endorsement.

(7) The department shall provide a means for electronic transmission of a medical card and may charge a vendor convenience fee in an amount not to exceed Two Dollars and Fifty Cents (\$2.50) per transmission.

**SOURCES:** Laws, 2009, ch. 560, § 11; Laws, 2014, ch. 424, § 18; Laws, 2014, ch. 508, § 1, eff from and after passage (approved Apr. 23, 2014.)

**Joint Legislative Committee Note** — Section 18 of Chapter 424, Laws of 2014, effective from and after October 1, 2014 (approved March 24, 2014), amended this section. Section 1 of Chapter 508, Laws of 2014, effective from and after passage (approved April 23, 2014), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 24, 2014, meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (c) by substituting “Commercial Driver’s License Information System” for “commercial driver’s license information system.” The Joint Committee ratified the correction at the July 24, 2014, meeting of the Committee.

**Amendment Notes** — The first 2014 amendment (ch. 424), effective October 1, 2014, in (2)(a)(iv), deleted the first sentence, “Any single vehicle with a gross vehicle weight rating of less than twenty-six thousand one (26,001) pounds or any such vehicle towing a vehicle with a gross vehicle weight rating not in excess of ten thousand (10,000) pounds except vehicles included in Class C or vehicles which require a special endorsement unless the proper endorsement appears on the license.”; and in the second sentence, deleted “be” preceding “commercial driver’s license”, substituted “are” for “shall”, and added “and shall be governed by the provisions of Section 63-1-5” to the end; in (2)(b), deleted the comma following “but are not limited” and inserted a comma after “to” in the last sentence.

The second 2014 amendment (ch. 508), effective April 23, 2014, added (7) and made a minor punctuation change in (2)(b).

### CHAPTER 3

#### Traffic Regulations and Rules of the Road

Article 17.	Right-of-Way .....	63-3-801
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## ARTICLE 9.

## ACCIDENTS AND REPORTS.

## § 63-3-401. Duties of driver involved in accident resulting in personal injury or death; offenses and penalties.

## JUDICIAL DECISIONS

1. Indictment — held sufficient.
2. Double jeopardy.
3. Illustrative cases.

**1. Indictment — held sufficient.**

That an indictment charging appellant with aggravated assault and leaving the scene of the accident did not state the location of the incident and whether the victims were pedestrians did not entitle him to post-conviction collateral relief, because he demonstrated no uncertainty as to these facts during his testimony at his sentencing hearing, and he waived any non-jurisdictional defects in the indictment when he pled guilty. *Fox v. State*, 129 So. 3d 208 (Miss. Ct. App. 2013), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 78 (Miss. 2014).

Indictment charging appellant with leaving the scene of the accident was sufficient and not vague; as it included the phrase “wilfully, unlawfully, and feloniously,” it was apparent that he was charged under the felony, not the misdemeanor, portion of Miss. Code Ann. § 63-3-401. *Fox v. State*, 129 So. 3d 208 (Miss. Ct. App. 2013), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 78 (Miss. 2014).

**2. Double jeopardy.**

Double Jeopardy Clause was not violated because the drunk-driving statute

established separate crimes for each of the victims identified and the offense of leaving the scene of an accident contained different elements from the offenses established by the drunk-driving statute. *Buckner v. State*, 135 So. 3d 915 (Miss. Ct. App. 2013), writ of certiorari denied by 136 So. 3d 437, 2014 Miss. LEXIS 201 (Miss. 2014).

**3. Illustrative cases.**

Evidence was sufficient to convict defendant of the felony of leaving the scene of an accident that resulted in injury or death because, although defendant stated that he assumed that he possibly hit a bird, the jury heard testimony from three witnesses that the victim’s bicycle was equipped with a blinking strobe light and an orange medical flag, which sat atop a five-foot-high plastic pole; defendant’s collision with the victim not only damaged the right fender of defendant’s truck but also broke his passenger-side mirror and tore off the accompanying mirror cover; and defendant called his girlfriend and asked her to call the hospital to see whether any reports had come in regarding someone struck by a vehicle. *Brown v. State*, — So. 3d —, 2014 Miss. App. LEXIS 85 (Miss. Ct. App. Feb. 18, 2014).

## ARTICLE 17.

## RIGHT-OF-WAY.

## SEC.

- 63-3-809. Procedure upon approach of authorized emergency vehicles; procedure upon approaching certain stationary vehicles using authorized flashing lights; duty of driver of authorized emergency, recovery or utility service vehicle.

**§ 63-3-805. Vehicle entering through highway.****JUDICIAL DECISIONS**

5. Negligence — In general.  
 7. —Comparative negligence.

**5. Negligence — In general.****7. —Comparative negligence.**

Circuit court did not err, pursuant to Miss. Code Ann. §§ 85-5-7(5) and 63-3-805, in refusing an apportionment-of-fault jury instruction because the uncontested

evidence presented at trial demonstrated that it was one motorist's negligence that was the sole proximate cause of the accident at an intersection and the injuries sustained by the other motorist and the other motorist's spouse. *Dunnam v. Abney*, 137 So. 3d 876 (Miss. Ct. App. 2013), writ of certiorari denied by 2014 Miss. LEXIS 242 (Miss. May 8, 2014).

**§ 63-3-809. Procedure upon approach of authorized emergency vehicles; procedure upon approaching certain stationary vehicles using authorized flashing lights; duty of driver of authorized emergency, recovery or utility service vehicle.**

(1) Upon the immediate approach of an authorized emergency vehicle, when the driver is giving audible signal by siren, exhaust whistle, or bell, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a law enforcement officer.

(2) Upon approaching a stationary authorized emergency vehicle, when such vehicle is giving a signal by use of flashing, blinking, oscillating or rotating lights, as authorized under Section 63-7-19, a person who drives an approaching vehicle shall:

(a) Proceeding with due caution, yield the right-of-way by making a lane change into a lane not adjacent to that of the authorized emergency vehicle, if possible with due regard to safety and traffic conditions, if on a roadway having at least four (4) lanes with not less than two (2) lanes proceeding in the same direction as the approaching vehicle; or

(b) Proceeding with due caution, reduce the speed of the vehicle, maintaining a safe speed for road conditions and being prepared to stop, if changing lanes would be impossible or unsafe.

(3) Upon approaching a stationary recovery vehicle, utility service vehicle, sanitation vehicle, or highway maintenance vehicle, when the stationary vehicle is giving a signal by use of authorized flashing lights, a person who drives an approaching vehicle shall:

(a) Proceeding with due caution, yield the right-of-way by making a lane change into a lane not adjacent to the stationary vehicle, if possible, with due regard to safety and traffic conditions, if on a roadway having at least four (4) lanes with not less than two (2) lanes proceeding in the same direction as the approaching vehicle; or



(b) Proceeding with due caution, reduce the speed of the vehicle, maintaining a safe speed for road conditions and being prepared to stop, if changing lanes would be impossible or unsafe.

(4) For purposes of this section, unless the context otherwise clearly requires:

(a) "Highway maintenance vehicle" means a vehicle used for the maintenance of highways and roadways in this state and is:

(i) Owned or operated by the Department of Transportation, a county, a municipality or other political subdivision of this state; or

(ii) Owned or operated by a contractor under contract with the Department of Transportation, a county, a municipality or other political subdivision of this state.

(b) "Recovery vehicle" means a truck that is specifically designed for towing a disabled vehicle or a combination of vehicles.

(c) "Utility service vehicle" means a vehicle used by any person, municipality, county, electric cooperative, corporation, board, commission, district or any entity created or authorized by public act, private act or general law to provide electricity, natural gas, water, waste water services, telecommunications services or any combination thereof, for sale to consumers in any particular service area, or by any contractor under contract with any such entity.

(d) "Sanitation vehicle" means a vehicle used to collect solid waste, refuse or recyclable material that is:

(i) Owned or operated by a county, a municipality or other political subdivision of this state; or

(ii) Owned or operated by a contractor under contract with a county, a municipality or other political subdivision of this state.

(5) A violation of this section is a misdemeanor punishable by a fine:

(a) Of not more than Two Hundred Fifty Dollars (\$250.00); or

(b) Of not more than One Thousand Dollars (\$1,000.00) if violation of this section results in:

(i) Property damage to the emergency vehicle, highway maintenance vehicle, utility service vehicle or recovery vehicle; or

(ii) Bodily injury to the driver or a passenger of any such vehicle.

(6) This section shall not operate to relieve the driver of an authorized emergency vehicle, a recovery vehicle, a utility service vehicle or a highway maintenance vehicle from the duty to drive with due regard for the safety of all persons using the roadway.

**SOURCES:** Codes, 1942, § 8199; Laws, 1938, ch. 200; Laws, 2007, ch. 315, § 1; Laws, 2012, ch. 412, § 1; Laws, 2014, ch. 314, § 1, eff from and after July 1, 2014.

**Amendment Notes** — The 2014 amendment in (3), substituted "sanitation vehicle, or" for "or a" preceding "highway maintenance vehicle, when" and substituted "the stationary" for "such" thereafter; deleted "recovery vehicle, the utility service vehicle or the highway maintenance" following "lane change into a lane not adjacent to the stationary" in (3)(a); added (4)(d); and made a minor stylistic change.



## ARTICLE 25.

## RECKLESS OR CARELESS DRIVING AND MISCELLANEOUS RULES.

## § 63-3-1213. Careless driving.

## JUDICIAL DECISIONS

3. Probable cause.  
5. Evidence sufficient.

**3. Probable cause.**

Testimony from the arresting officer that he observed defendant's truck pass so close to a deputy that the outside mirror could have struck the officer and that the truck then ran off the road provided sufficient probable cause for a traffic stop based on careless driving. *Ludwig v. State*, 122 So. 3d 1229 (Miss. Ct. App. 2013).

**5. Evidence sufficient.**

Evidence was sufficient to support defendant's convictions of running a red light and careless driving where a police officer testified that she observed defendant drive his entire vehicle over a concrete median and saw him run a red light. *Lobo v. City of Ridgeland*, 135 So. 3d 148 (Miss. Ct. App. 2013).

## CHAPTER 7

## Equipment and Identification

General Provisions ..... 63-7-1

## GENERAL PROVISIONS

## SEC.

63-7-19. Lights on police and emergency vehicles; lights on rural mail carrier vehicles; lights on sanitation vehicles.

**§ 63-7-19. Lights on police and emergency vehicles; lights on rural mail carrier vehicles; lights on sanitation vehicles.**

(1)(a) Except as otherwise provided for unmarked vehicles under Section 19-25-15 and Section 25-1-87, every police vehicle shall be marked with blue lights. Every ambulance and special use EMS vehicle as defined in Section 41-59-3 shall be marked with red lights front and back and also may be marked with white and amber lights in addition to red lights. Every emergency management/civil defense vehicle, including emergency response vehicles of the Department of Environmental Quality, shall be marked with blinking, rotating or oscillating red lights. Official vehicles of a 911 Emergency Communications District may be marked with red and white lights. Every wrecker or other vehicle used for emergency work, except vehicles authorized to use blue or red lights, shall be marked with blinking, oscillating or rotating amber colored lights to warn other vehicles to yield the right-of-way, as provided in Section 63-3-809. Only police vehicles used for emergency work may be marked with blinking, oscillating or rotating blue lights to warn other vehicles to yield the right-of-way. Only law enforcement

vehicles, fire vehicles, private or department-owned vehicles used by firemen of volunteer fire departments which receive funds pursuant to Section 83-1-39 when responding to calls, emergency management/civil defense vehicles, emergency response vehicles of the Department of Environmental Quality, ambulances used for emergency work, and 911 Emergency Communications District vehicles may be marked with blinking, oscillating or rotating red lights to warn other vehicles to yield the right-of-way. This section shall not apply to school buses carrying lighting devices in accordance with Section 63-7-23.

(b) Emergency response vehicles listed in this subsection (1) are also authorized to use alternating flashing headlights when responding to any emergency.

(2) Any vehicle operated by a United States rural mail carrier for the purpose of delivering United States mail may be marked with two (2) amber-colored lights on front top of the vehicle and two (2) red-colored lights on rear top of the vehicle and alternatively or additionally may be marked with a white, flashing strobe light on the roof of the vehicle so as to warn approaching travelers to decrease their speed because of danger of colliding with the mail carrier as he stops and starts along the edge of the road, street or highway.

(3) Any sanitation vehicle operated by a county, municipality or other political subdivision of this state or by a contractor under contract with a county, municipality or other political subdivision of this state to collect solid waste, refuse or recyclable material may be marked with flashing or oscillating white- or amber-colored lights so as to warn approaching travelers to decrease speed because of the danger of colliding with the sanitation collection vehicle as it stops and starts along the road, street or highway.

**SOURCES:** Codes, 1942, § 8229-08; Laws, 1948, ch. 343, § 16; Laws, 1950, ch. 407, § 5; Laws, 1962, ch. 527; Laws, 1964, ch. 455, § 1; Laws, 1970, ch. 484, § 1; Laws, 1979, ch. 398, § 1; Laws, 1987, ch. 333, § 1; Laws, 1994, ch. 517, § 1; Laws, 1995, ch. 581, § 1; Laws, 2004, ch. 425, § 5; Laws, 2006, ch. 468, § 2; Laws, 2014, ch. 314, § 2, eff from and after July 1, 2014.

**Amendment Notes** — The 2014 amendment redesignated former (1), (2), and (3), as present (1)(a), (b), and (2); in (1)(b), substituted “Emergency response vehicles listed” for “Any”, deleted “vehicle referred to” thereafter, inserted “this” preceding “subsection (1)”, substituted “are” for “of this section”, and deleted “shall be” preceding “authorized to use”; added (3); and made minor stylistic changes.

## CHAPTER 11

### Implied Consent Law

#### SEC.

- 63-11-23. Review of report of law enforcement officer by Commissioner of Public Safety; notice of suspension; seizure of license where test indicates blood alcohol concentration above specified level; temporary permit to drive; denial of permit; representation of state in proceedings.
- 63-11-30. Operation of vehicle while under influence of intoxicating liquor or other substances impairing ability to operate vehicle or with blood alcohol

concentrations above specified levels; penalties; separate offense of endangering child by driving under influence; penalties; expunction; nonadjudication.

63-11-31. Interlock restricted license; ignition interlock device; impoundment or immobilization of vehicles; use of Interlock Device Fund to offset cost of device installation and operation by indigent offenders; reinstatement of license without interlock restriction.

63-11-33. Interlock Device Fund; purpose; use of monies.

**§ 63-11-5. Implied consent to chemical tests; administration of tests; warnings; form of traffic tickets, citations or affidavits; advice regarding right to request legal or medical assistance; rules and regulations.**

**JUDICIAL DECISIONS**

4. Mandatory pre-test observation.

6. Jury instructions.

**4. Mandatory pre-test observation.**

Defendant's conviction for driving under the influence did not deprive defendant of a protected property right when an officer allegedly did not observe defendant for the required 20-minute period before administering a breath test because (1) it was not error to find defendant was observed for the mandatory period, and (2) defendant had no protected property right in defendant's driving privilege. *Gore v. State*, — So. 3d —, 2013 Miss. App. LEXIS 842 (Miss. Ct. App. Dec. 3, 2013).

It was not error to accept an officer's testimony that the officer observed defendant for the required 20 minutes before

administering a breath test because (1) the officer's conversation with defendant's wife took no significant amount of time, and (2) defendant was in the officer's presence and observed by other officers. *Gore v. State*, — So. 3d —, 2013 Miss. App. LEXIS 842 (Miss. Ct. App. Dec. 3, 2013).

**6. Jury instructions.**

Trial court did not err in giving its instruction on defendant's refusal to submit to a breath test as the instruction tracked the language of Miss. Code Ann. § 63-11-5 (Supp. 2012) and did not violate defendant's U.S. Const. amend. V prosecution against self-incrimination. *Merritt v. State*, 127 So. 3d 1150 (Miss. Ct. App. 2013), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 14 (Miss. 2014).

**§ 63-11-8. Testing of motor vehicle operator involved in accident resulting in death.**

**JUDICIAL DECISIONS**

**3. Time for test.**

Defendant's conviction of driving under the influence causing death was appropriate because there was no evidence that police officers deliberately delayed defendant's blood alcohol test, as they had acted immediately in obtaining a subpoena and traveling to Memphis to get a blood

sample from defendant, and there was no evidence that defendant was prejudiced by the delay. Moreover, while probable cause existed to test defendant, probable cause did not exist to test the other driver. *Andino v. State*, 125 So. 3d 700 (Miss. Ct. App. 2013).



**§ 63-11-23. Review of report of law enforcement officer by Commissioner of Public Safety; notice of suspension; seizure of license where test indicates blood alcohol concentration above specified level; temporary permit to drive; denial of permit; representation of state in proceedings.**

(1) The Commissioner of Public Safety, or his authorized agent, shall review the sworn report by a law enforcement officer as provided in Section 63-11-21. If upon review the Commissioner of Public Safety, or his authorized agent, finds (a) that the law enforcement officer had reasonable grounds and probable cause to believe the person had been driving a motor vehicle upon the public highways, public roads and streets of this state while under the influence of intoxicating liquor or any other substance that may impair a person's mental or physical ability; (b) that he refused to submit to the test upon request of the officer; and (c) that the person was informed that his license and driving privileges would be suspended or denied if he refused to submit to the chemical test, then the Commissioner of Public Safety, or his authorized agent, shall give notice to the licensee that his license or permit to drive, or any nonresident operating privilege, shall be suspended thirty (30) days after the date of the notice for a period of ninety (90) days in the event the person has not previously been convicted of a violation of Section 63-11-30, or, for a period of one (1) year in the event of any previous conviction of the person under Section 63-11-30. In the event the commissioner or his authorized agent determines that the license should not be suspended, he shall return the license or permit to the licensee.

The notice of suspension shall be in writing and given in the manner provided in Section 63-1-52(2)(a).

(2) If the chemical testing of a person's breath indicates the blood alcohol concentration was eight one-hundredths percent (.08%) or more for persons who are above the legal age to purchase alcoholic beverages under state law, or two one-hundredths percent (.02%) or more for persons who are below the legal age to purchase alcoholic beverages under state law, based upon grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath as shown by a chemical analysis of such person's blood, or breath, or urine, the arresting officer shall seize the license and give the driver a receipt for his license on forms prescribed by the Commissioner of Public Safety and shall promptly forward the license together with a sworn report to the Commissioner of Public Safety. The receipt given a person as provided herein shall be valid as a permit to operate a motor vehicle for a period of thirty (30) days in order that the defendant be processed through the court having original jurisdiction and a final disposition had. If the defendant requests a trial within thirty (30) days and trial is not commenced within thirty (30) days, then the court shall determine if the delay in the trial is the fault of the defendant or his counsel. If the court finds that it is not the fault of the defendant or his counsel, then the court shall order the defendant's driving privileges to be extended until the defendant is convicted. If a receipt

or permit to drive issued pursuant to the provisions of this subsection expires without a trial having been requested as provided for in this subsection, then the Commissioner of Public Safety or his authorized agent shall suspend the license or permit to drive or any nonresident operating privilege for the applicable period of time as provided for in subsection (1) of this section.

(3) If the person is a resident without a license or permit to operate a motor vehicle in this state, the Commissioner of Public Safety, or his authorized agent, shall deny to the person the issuance of a license or permit for a period of one (1) year beginning thirty (30) days after the date of notice of such suspension.

(4) It shall be the duty of the county prosecuting attorney, an attorney employed under the provisions of Section 19-3-49, or in the event there is no such prosecuting attorney for the county, the duty of the district attorney to represent the state in any hearing held under the provisions of Section 63-11-25, under the provisions of Section 63-11-37(2) or under the provisions of Section 63-11-30(2)(a).

**SOURCES:** Codes, 1942, § 8175-12; Laws, 1971, ch. 515, § 12; Laws, 1981, ch. 491, § 5; Laws, 1983, ch. 466, § 4; Laws, 1989, ch. 482, § 25; Laws, 1991, ch. 412, § 2; Laws, 1996, ch. 527, § 9; Laws, 1998, ch. 505, § 1; Laws, 2000, ch. 542, § 2; Laws, 2002, ch. 367, § 2; Laws, 2013, ch. 489, § 7; Laws, 2014, ch. 493, § 4, **eff from and after July 1, 2014.**

**Amendment Notes** — The 2014 amendment deleted (5) regarding nonapplicability of section to nonadjudicated persons.

**§ 63-11-30. Operation of vehicle while under influence of intoxicating liquor or other substances impairing ability to operate vehicle or with blood alcohol concentrations above specified levels; penalties; separate offense of endangering child by driving under influence; penalties; expunction; nonadjudication.**

**[Until October 1, 2014, this section shall read:]**

(1) It is unlawful for any person to drive or otherwise operate a vehicle within this state who (a) is under the influence of intoxicating liquor; (b) is under the influence of any other substance which has impaired such person's ability to operate a motor vehicle; (c) has an alcohol concentration of eight one-hundredths percent (.08%) or more for persons who are above the legal age to purchase alcoholic beverages under state law, or two one-hundredths percent (.02%) or more for persons who are below the legal age to purchase alcoholic beverages under state law, in the person's blood based upon grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath as shown by a chemical analysis of such person's breath, blood or urine administered as authorized by this chapter; (d) is under the influence of any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances



Law; or (e) has an alcohol concentration of four one-hundredths percent (.04%) or more in the person's blood, based upon grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath as shown by a chemical analysis of such person's blood, breath or urine, administered as authorized by this chapter for persons operating a commercial motor vehicle.

(2)(a) Except as otherwise provided in subsection (3), upon conviction of any person for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 63-11-5 were given, or where chemical test results are not available, such person shall be fined not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00), or imprisoned for not more than forty-eight (48) hours in jail, or both; and the court shall order such person to attend and complete an alcohol safety education program as provided in Section 63-11-32. The court may substitute attendance at a victim impact panel instead of forty-eight (48) hours in jail. In addition, the Department of Public Safety, the Commissioner of Public Safety or his duly authorized agent shall, after conviction and upon receipt of the court abstract, suspend the driver's license and driving privileges of such person for a period of not less than ninety (90) days and until such person attends and successfully completes an alcohol safety education program as herein provided. Commercial driving privileges shall be suspended as provided in Section 63-1-216.

The circuit court having jurisdiction in the county in which the conviction was had or the circuit court of the person's county of residence may reduce the suspension of driving privileges under subsection (2)(a) of this section if the denial of which would constitute a hardship on the offender, except that no court may issue such an order reducing the suspension of driving privileges under this subsection until thirty (30) days have elapsed from the effective date of the suspension. Hardships shall only apply to first offenses under subsection (1) of this section, and shall not apply to second, third or subsequent convictions of any person violating subsection (1) of this section. A reduction of suspension on the basis of hardship shall not be available to any person who refused to submit to a chemical test upon the request of a law enforcement officer as provided in Section 63-11-5. When the petition is filed, such person shall pay to the circuit clerk of the court where the petition is filed a fee of Fifty Dollars (\$50.00), which shall be deposited into the State General Fund to the credit of a special fund hereby created in the State Treasury to be used for alcohol or drug abuse treatment and education, upon appropriation by the Legislature. This fee shall be in addition to any other court costs or fees required for the filing of petitions.

The petition filed under the provisions of this subsection shall contain the specific facts which the petitioner alleges to constitute a hardship and the driver's license number of the petitioner. A hearing may be held on any petition filed under this subsection only after ten (10) days' prior written



notice to the Commissioner of Public Safety, or his designated agent, or the attorney designated to represent the state. At such hearing, the court may enter an order reducing the period of suspension.

The order entered under the provisions of this subsection shall contain the specific grounds upon which hardship was determined, and shall order the petitioner to attend and complete an alcohol safety education program as provided in Section 63-11-32. A certified copy of such order shall be delivered to the Commissioner of Public Safety by the clerk of the court within five (5) days of the entry of the order. The certified copy of such order shall contain information which will identify the petitioner, including, but not limited to, the name, mailing address, street address, social security number and driver's license number of the petitioner.

At any time following at least thirty (30) days of suspension for a first offense violation of this section, the court may grant the person hardship driving privileges upon written petition of the defendant, if it finds reasonable cause to believe that revocation would hinder the person's ability to:

- (i) Continue his employment;
- (ii) Continue attending school or an educational institution; or
- (iii) Obtain necessary medical care.

Proof of the hardship shall be established by clear and convincing evidence which shall be supported by independent documentation.

(b) Except as otherwise provided in subsection (3), upon any second conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not less than Six Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred Dollars (\$1,500.00), shall be imprisoned not less than five (5) days nor more than one (1) year and sentenced to community service work for not less than ten (10) days nor more than one (1) year. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain. Except as may otherwise be provided by paragraph (d) of this subsection, the Commissioner of Public Safety shall suspend the driver's license of such person for two (2) years. Suspension of a commercial driver's license shall be governed by Section 63-1-216. Upon any second conviction as described in this paragraph, the court shall ascertain whether the defendant is married, and if the defendant is married shall obtain the name and address of the defendant's spouse; the clerk of the court shall submit this information to the Department of Public Safety. Further, the commissioner shall notify in writing, by certified mail, return receipt requested, the owner of the vehicle and the spouse, if any, of the person convicted of the second violation of the possibility of forfeiture of the vehicle if such person is convicted of a third violation of subsection (1) of this section. The owner of the vehicle and the spouse shall be considered notified under this paragraph if the notice is deposited in the United States mail and any claim that the notice was not

in fact received by the addressee shall not affect a subsequent forfeiture proceeding.

For any second or subsequent conviction of any person under this section, the person shall also be subject to the penalties set forth in Section 63-11-31.

(c) Except as otherwise provided in subsection (3), for any third or subsequent conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be guilty of a felony and fined not less than Two Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars (\$5,000.00), shall serve not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections; provided, however, that for any such offense which does not result in serious injury or death to any person, any sentence of incarceration may be served in the county jail rather than in the State Penitentiary at the discretion of the circuit court judge. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain. The law enforcement agency shall seize the vehicle operated by any person charged with a third or subsequent violation of subsection (1) of this section, if such convicted person was driving the vehicle at the time the offense was committed. Such vehicle may be forfeited in the manner provided by Sections 63-11-49 through 63-11-53. Except as may otherwise be provided by paragraph (e) of this subsection, the Commissioner of Public Safety shall suspend the driver's license of such person for five (5) years. The suspension of a commercial driver's license shall be governed by Section 63-1-216.

(d) Except as otherwise provided in subsection (3), any person convicted of a second violation of subsection (1) of this section shall receive an in-depth diagnostic assessment, and if as a result of such assessment is determined to be in need of treatment of his alcohol and/or drug abuse problem, such person shall successfully complete treatment of his alcohol and/or drug abuse problem at a program site certified by the Department of Mental Health. Such person shall be eligible for reinstatement of his driving privileges upon the successful completion of such treatment after a period of one (1) year after such person's driver's license is suspended. Each person who receives a diagnostic assessment shall pay a fee representing the cost of such assessment. Each person who participates in a treatment program shall pay a fee representing the cost of such treatment.

(e) Except as otherwise provided in subsection (3), any person convicted of a third or subsequent violation of subsection (1) of this section shall receive an in-depth diagnostic assessment, and if as a result of such assessment is determined to be in need of treatment of his alcohol and/or drug abuse problem, such person shall enter an alcohol and/or drug abuse program approved by the Department of Mental Health for treatment of such person's alcohol and/or drug abuse problem. If such person success-



fully completes such treatment, such person shall be eligible for reinstatement of his driving privileges after a period of three (3) years after such person's driver's license is suspended.

(f) The Department of Public Safety shall promulgate rules and regulations for the use of interlock ignition devices as provided in Section 63-11-31 and consistent with the provisions therein. Such rules and regulations shall provide for the calibration of such devices and shall provide that the cost of the use of such systems shall be borne by the offender. The Department of Public Safety shall approve which vendors of such devices shall be used to furnish such systems.

(3)(a) This subsection shall be known and may be cited as Zero Tolerance for Minors. The provisions of this subsection shall apply only when a person under the age of twenty-one (21) years has a blood alcohol concentration of two one-hundredths percent (.02%) or more, but lower than eight one-hundredths percent (.08%). If such person's blood alcohol concentration is eight one-hundredths percent (.08%) or more, the provisions of subsection (2) shall apply.

(b) Upon conviction of any person under the age of twenty-one (21) years for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 63-11-5 were given, or where chemical test results are not available, such person shall have his driver's license suspended for ninety (90) days and shall be fined Two Hundred Fifty Dollars (\$250.00); and the court shall order such person to attend and complete an alcohol safety education program as provided in Section 63-11-32. The court may also require attendance at a victim impact panel.

The court in the county in which the conviction was had or the circuit court of the person's county of residence may reduce the suspension of driving privileges under subsection (2)(a) of this section if the denial of which would constitute a hardship on the offender, except that no court may issue such an order reducing the suspension of driving privileges under this subsection until thirty (30) days have elapsed from the effective date of the suspension. Hardships shall only apply to first offenses under subsection (1) of this section, and shall not apply to second, third or subsequent convictions of any person violating subsection (1) of this section. A reduction of suspension on the basis of hardship shall not be available to any person who refused to submit to a chemical test upon the request of a law enforcement officer as provided in Section 63-11-5. When the petition is filed, such person shall pay to the circuit clerk of the court where the petition is filed a fee of Fifty Dollars (\$50.00), which shall be deposited into the State General Fund to the credit of a special fund hereby created in the State Treasury to be used for alcohol or drug abuse treatment and education, upon appropriation by the Legislature. This fee shall be in addition to any other court costs or fees required for the filing of petitions.

The petition filed under the provisions of this subsection shall contain the specific facts which the petitioner alleges to constitute a hardship and the driver's license number of the petitioner. A hearing may be held on any



petition filed under this subsection only after ten (10) days' prior written notice to the Commissioner of Public Safety, or his designated agent, or the attorney designated to represent the state. At such hearing, the court may enter an order reducing the period of suspension.

The order entered under the provisions of this subsection shall contain the specific grounds upon which hardship was determined, and shall order the petitioner to attend and complete an alcohol safety education program as provided in Section 63-11-32. A certified copy of such order shall be delivered to the Commissioner of Public Safety by the clerk of the court within five (5) days of the entry of the order. The certified copy of such order shall contain information which will identify the petitioner, including, but not limited to, the name, mailing address, street address, social security number and driver's license number of the petitioner.

At any time following at least thirty (30) days of suspension for a first offense violation of this section, the court may grant the person hardship driving privileges upon written petition of the defendant, if it finds reasonable cause to believe that revocation would hinder the person's ability to:

- (i) Continue his employment;
- (ii) Continue attending school or an educational institution; or
- (iii) Obtain necessary medical care.

Proof of the hardship shall be established by clear and convincing evidence which shall be supported by independent documentation.

(c) Upon any second conviction of any person under the age of twenty-one (21) years violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not more than Five Hundred Dollars (\$500.00) and shall have his driver's license suspended for one (1) year.

(d) For any third or subsequent conviction of any person under the age of twenty-one (21) years violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not more than One Thousand Dollars (\$1,000.00) and shall have his driver's license suspended until he reaches the age of twenty-one (21) or for two (2) years, whichever is longer.

(e) Any person under the age of twenty-one (21) years convicted of a second violation of subsection (1) of this section, may have the period that his driver's license is suspended reduced if such person receives an in-depth diagnostic assessment, and as a result of such assessment is determined to be in need of treatment of his alcohol and/or drug abuse problem and successfully completes treatment of his alcohol and/or drug abuse problem at a program site certified by the Department of Mental Health. Such person shall be eligible for reinstatement of his driving privileges upon the successful completion of such treatment after a period of six (6) months after such person's driver's license is suspended. Each person who receives a diagnostic assessment shall pay a fee representing the cost of such assessment. Each person who participates in a treatment program shall pay a fee representing the cost of such treatment.

(f) Any person under the age of twenty-one (21) years convicted of a third or subsequent violation of subsection (1) of this section shall complete treatment of an alcohol and/or drug abuse program at a site certified by the Department of Mental Health.

(g) The court shall have the discretion to rule that a first offense of this subsection by a person under the age of twenty-one (21) years shall be nonadjudicated. Such person shall be eligible for nonadjudication only once. The Department of Public Safety shall maintain a confidential registry of all cases which are nonadjudicated as provided in this paragraph. A judge who rules that a case is nonadjudicated shall forward such ruling to the Department of Public Safety. Judges and prosecutors involved in implied consent violations shall have access to the confidential registry for the purpose of determining nonadjudication eligibility. A record of a person who has been nonadjudicated shall be maintained for five (5) years or until such person reaches the age of twenty-one (21) years. Any person whose confidential record has been disclosed in violation of this paragraph shall have a civil cause of action against the person and/or agency responsible for such disclosure.

(4) In addition to the other penalties provided in this section, every person refusing a law enforcement officer's request to submit to a chemical test of his breath as provided in this chapter, or who was unconscious at the time of a chemical test and refused to consent to the introduction of the results of such test in any prosecution, shall suffer an additional suspension of driving privileges as follows:

The Commissioner of Public Safety or his authorized agent shall suspend the driver's license or permit to drive or deny the issuance of a license or permit to such person as provided for first, second and third or subsequent offenders in subsection (2) of this section. Such suspension shall be in addition to any suspension imposed pursuant to subsection (1) of Section 63-11-23. The minimum suspension imposed under this subsection shall not be reduced and no prosecutor is authorized to offer a reduction of such suspension as part of a plea bargain.

(5) Every person who operates any motor vehicle in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other limb, organ or member of another shall, upon conviction, be guilty of a separate felony for each such death, mutilation, disfigurement or other injury and shall be committed to the custody of the State Department of Corrections for a period of time of not less than five (5) years and not to exceed twenty-five (25) years for each such death, mutilation, disfigurement or other injury, and the imprisonment for the second or each subsequent conviction, in the discretion of the court, shall commence either at the termination of the imprisonment for the preceding conviction or run concurrently with the preceding conviction. Any person charged with causing the death of another as described in this subsection shall be required to post bail before being released after arrest.



(6) Upon conviction of any violation of subsection (1) of this section, the trial judge shall sign in the place provided on the traffic ticket, citation or affidavit stating that the person arrested either employed an attorney or waived his right to an attorney after having been properly advised. If the person arrested employed an attorney, the name, address and telephone number of the attorney shall be written on the ticket, citation or affidavit. The judge shall cause a copy of the traffic ticket, citation or affidavit, and any other pertinent documents concerning the conviction, to be sent to the Commissioner of Public Safety. A copy of the traffic ticket, citation or affidavit and any other pertinent documents, having been attested as true and correct by the Commissioner of Public Safety, or his designee, shall be sufficient proof of the conviction for purposes of determining the enhanced penalty for any subsequent convictions of violations of subsection (1) of this section.

(7) Convictions in other states of violations for driving or operating a vehicle while under the influence of an intoxicating liquor or while under the influence of any other substance that has impaired the person's ability to operate a motor vehicle occurring after July 1, 1992, shall be counted for the purposes of determining if a violation of subsection (1) of this section is a first, second, third or subsequent offense and the penalty that shall be imposed upon conviction for a violation of subsection (1) of this section.

(8) For the purposes of determining how to impose the sentence for a second, third or subsequent conviction under this section, the indictment shall not be required to enumerate previous convictions. It shall only be necessary that the indictment state the number of times that the defendant has been convicted and sentenced within the past five (5) years under this section to determine if an enhanced penalty shall be imposed. The amount of fine and imprisonment imposed in previous convictions shall not be considered in calculating offenses to determine a second, third or subsequent offense of this section.

(9) Any person under the legal age to obtain a license to operate a motor vehicle convicted under this section shall not be eligible to receive such license until the person reaches the age of eighteen (18) years.

(10) Suspension of driving privileges for any person convicted of violations of subsection (1) of this section shall run consecutively.

(11) The court may order the use of any ignition interlock device as provided in Section 63-11-31.

(12) A person who violates subsection (1) of this section while transporting in a motor vehicle a child under the age of sixteen (16) years is guilty of the separate offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired such person's ability to operate a motor vehicle. The offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired such person's ability to operate a motor vehicle shall not be merged with an offense of violating subsection (1) of this section for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished as follows:



(a) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a first conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than One Thousand Dollars (\$1,000.00) or shall be imprisoned for not more than twelve (12) months, or both;

(b) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a second conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00) or shall be imprisoned for one (1) year, or both;

(c) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a third or subsequent conviction shall be guilty of a felony and, upon conviction, shall be fined not less than Ten Thousand Dollars (\$10,000.00) or shall be imprisoned for not less than one (1) year nor more than five (5) years, or both; and

(d) A person who commits a violation of this subsection which results in the serious injury or death of a child, without regard to whether such offense was a first, second, third or subsequent offense shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than Ten Thousand Dollars (\$10,000.00) and shall be imprisoned for not less than five (5) years nor more than twenty-five (25) years.

**[From and after October 1, 2014, this section shall read:]**

(1) It is unlawful for a person to drive or otherwise operate a vehicle within this state if the person:

(a) Is under the influence of intoxicating liquor;

(b) Is under the influence of any other substance that has impaired the person's ability to operate a motor vehicle;

(c) Is under the influence of any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances Law; or

(d) Has an alcohol concentration in the person's blood, based upon grams of alcohol per one hundred (100) milliliters of blood, or grams of alcohol per two hundred ten (210) liters of breath, as shown by a chemical analysis of the person's breath, blood or urine administered as authorized by this chapter, of:

(i) Eight one-hundredths percent (.08%) or more for a person who is above the legal age to purchase alcoholic beverages under state law;

(ii) Two one-hundredths percent (.02%) or more for a person who is below the legal age to purchase alcoholic beverages under state law; or

(iii) Four one-hundredths percent (.04%) or more for a person operating a commercial motor vehicle.

(2)(a) **First offense DUI.** — (i) Except as otherwise provided in subsection (3) of this section, upon conviction of any person for the first offense of

violating subsection (1) of this section where chemical tests provided for under Section 63-11-5 were given, or where chemical test results are not available, the person shall be fined not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00), or imprisoned for not more than forty-eight (48) hours in jail, or both; the court shall order the person to attend and complete an alcohol safety education program as provided in Section 63-11-32 within one (1) year. The court may substitute attendance at a victim impact panel instead of forty-eight (48) hours in jail. Fifteen (15) days after receipt of the court abstract, the Department of Public Safety shall suspend the driver's license and driving privileges of the person for ninety (90) days unless the person has surrendered his driver's license to be voided and obtained a new driver's license that is restricted to operation of vehicles equipped with an ignition interlock device that complies with Section 63-11-31; the person will not be eligible for an unrestricted license for ninety (90) days and until the person has attended and successfully completed an alcohol safety education program as provided in Section 63-11-32.

(ii) Commercial driving privileges shall be suspended as provided in Section 63-1-216 for a violation of subsection (1) of this section.

(iii) A qualifying first offense under subsection (1) of this section may be nonadjudicated by the court under subsection (14) of this section. The holder of a commercial driver's license or a commercial learning permit is ineligible for nonadjudication.

(b) **Second offense DUI.** (i) Except as otherwise provided in subsection (3), upon any second conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, the person shall be fined not less than Six Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred Dollars (\$1,500.00), shall be imprisoned not less than five (5) days nor more than one (1) year and sentenced to community service work for not less than ten (10) days nor more than one (1) year. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain. Fifteen (15) days after receipt of the court abstract, the Department of Public Safety shall suspend the driver's license of the person for one (1) year unless the person has surrendered his driver's license to be voided and obtained a new driver's license that is restricted to operation of vehicles equipped with an ignition interlock device that complies with Section 63-11-31; the person will not be eligible for an unrestricted license until the person has either been subject to a full one-year suspension of license or has exercised the driving privilege solely under an interlock-restricted driver's license for one (1) full year.

(ii) Suspension of commercial driving privileges shall be governed by Section 63-1-216.

(c) **Third and subsequent offense DUI.** (i) Except as otherwise provided in subsection (3), for any third conviction of any person violating subsection (1) of this section, the offenses being committed within a period of

five (5) years, the person shall be guilty of a felony and fined not less than Two Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars (\$5,000.00), and shall serve not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections. For any offense that does not result in serious injury or death to any person, the sentence of incarceration may be served in the county jail rather than in the State Penitentiary at the discretion of the circuit court judge. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain. The person may exercise the privilege to drive only under a driver's license that is restricted to operation of vehicles equipped with an ignition interlock device that complies with Section 63-11-31 for three (3) years following release from incarceration and will not be eligible for an unrestricted driver's license for three (3) years.

(ii) The suspension of commercial driving privileges shall be governed by Section 63-1-216.

(d) Except as otherwise provided in subsection (3), any person convicted of a second or subsequent violation of subsection (1) of this section shall receive an in-depth diagnostic assessment, and if as a result of the assessment is determined to be in need of treatment for alcohol or drug abuse, the person shall successfully complete treatment at a program site certified by the Department of Mental Health. Each person who receives a diagnostic assessment shall pay a fee representing the cost of the assessment. Each person who participates in a treatment program shall pay a fee representing the cost of treatment.

(e) The use of ignition interlock devices shall be as provided in Section 63-11-31.

(3) **Zero Tolerance for Minors.** — (a) This subsection shall be known and may be cited as Zero Tolerance for Minors. The provisions of this subsection shall apply only when a person under the age of twenty-one (21) years has a blood alcohol concentration of two one-hundredths percent (.02%) or more, but lower than eight one-hundredths percent (.08%). If the person's blood alcohol concentration is eight one-hundredths percent (.08%) or more, the provisions of subsection (2) shall apply.

(b)(i) A person under the age of twenty-one (21) is eligible for nonadjudication of a qualifying first offense by the court pursuant to subsection (14) of this section.

(ii) Upon conviction of any person under the age of twenty-one (21) years for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 63-11-5 were given, or where chemical test results are not available, the person shall be fined Two Hundred Fifty Dollars (\$250.00); the court shall order the person to attend and complete an alcohol safety education program as provided in Section 63-11-32 within one (1) year. Fifteen (15) days after receipt of the court abstract, the Department of Public Safety shall suspend the driver's license and driving privileges of the person for ninety (90) days unless the



person has surrendered his driver's license to be voided and obtained a new driver's license that is restricted to operation of vehicles equipped with an ignition interlock device that complies with Section 63-11-31; the person will not be eligible for any other form of license for ninety (90) days. The court may also require attendance at a victim impact panel.

(c) A person under the age of twenty-one (21) years who is convicted of a second violation of subsection (1) of this section, the offenses being committed within a period of five (5) years, shall be fined not more than Five Hundred Dollars (\$500.00). Fifteen (15) days after receipt of the court abstract, the Department of Public Safety shall suspend the driver's license of the person for one (1) year unless the person has surrendered his driver's license to be voided and obtained a new driver's license that is restricted to operation of vehicles equipped with an ignition interlock device that complies with Section 63-11-31; the person will not be eligible for an unrestricted license until the person has either been subject to a full one-year suspension or has exercised the driving privilege solely under an interlock restricted license for one (1) full year.

(d) A person under the age of twenty-one (21) years who is convicted of a third or subsequent violation of subsection (1) of this section, the offenses being committed within a period of five (5) years, shall be fined not more than One Thousand Dollars (\$1,000.00) and, upon receipt of the court abstract, the Department of Public Safety shall suspend the driver's license of the person until the person reaches the age of twenty-one (21) or for two (2) years, whichever is longer.

(e) Any person under the age of twenty-one (21) years convicted of a second violation of subsection (1) of this section, may have the period of driver's license suspension reduced to six (6) months if the person receives an in-depth diagnostic assessment, and as a result of the assessment is determined to be in need of treatment for alcohol or drug abuse and successfully completes treatment for alcohol or drug abuse at a program site certified by the Department of Mental Health. Each person who receives a diagnostic assessment shall pay a fee representing the cost of such assessment. Each person who participates in a treatment program shall pay a fee representing the cost of such treatment.

(f) Any person under the age of twenty-one (21) years convicted of a third or subsequent violation of subsection (1) of this section shall complete treatment of an alcohol or drug abuse program at a site certified by the Department of Mental Health.

(4) **DUI test refusal.** — In addition to the other penalties provided in this section, every person refusing a law enforcement officer's request to submit to a chemical test of the person's breath as provided in this chapter, or who was unconscious at the time of a chemical test and refused to consent to the introduction of the results of the test in any prosecution, shall suffer an additional administrative suspension of driving privileges as set forth in Section 63-11-23 unless the person surrenders his driver's license to be voided and obtains a new driver's license that is restricted to operation of vehicles

equipped with an ignition interlock device that complies with Section 63-11-31; the person will be limited to exercise of the driving privilege only under an interlock-restricted driver's license for twice the period imposed for administrative driver's license suspension under Section 63-11-23. Any other license restriction or suspension imposed upon the person under this chapter will run consecutively and not concurrently with the administrative suspension for test refusal imposed under this section or Section 63-11-23.

(5) **Aggravated DUI.** — (a) Every person who operates any motor vehicle in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other limb, organ or member of another shall, upon conviction, be guilty of a separate felony for each victim who suffers death, mutilation, disfigurement or other injury and shall be committed to the custody of the State Department of Corrections for a period of time of not less than five (5) years and not to exceed twenty-five (25) years for each death, mutilation, disfigurement or other injury, and the imprisonment for the second or each subsequent conviction, in the discretion of the court, shall commence either at the termination of the imprisonment for the preceding conviction or run concurrently with the preceding conviction. Any person charged with causing the death of another as described in this subsection shall be required to post bail before being released after arrest.

(b) The court may order an ignition-interlock restriction on the offender's privilege to drive as a condition of probation or post-release supervision not to exceed four (4) years.

(6) **DUI citations.** — Upon conviction of any violation of subsection (1) of this section, the trial judge shall sign in the place provided on the traffic ticket, citation or affidavit stating that the person arrested either employed an attorney or waived his right to an attorney after having been properly advised. If the person arrested employed an attorney, the name, address and telephone number of the attorney shall be written on the ticket, citation or affidavit. The court clerk shall send a copy of the traffic ticket, citation or affidavit, and any other pertinent documents concerning the conviction or other order of the court, to the Department of Public Safety. A copy of the traffic ticket, citation or affidavit and any other pertinent documents, having been attested as true and correct by the Commissioner of Public Safety, or his designee, shall be sufficient proof of the conviction for purposes of determining the enhanced penalty for any subsequent convictions of violations of subsection (1) of this section.

(7) **Out-of-state prior convictions.** — Convictions in another state, territory or possession of the United States, or under the law of a federally recognized Native American tribe, of violations for driving or operating a vehicle while under the influence of an intoxicating liquor or while under the influence of any other substance that has impaired the person's ability to operate a motor vehicle occurring within five (5) years before an offense shall be counted for the purposes of determining if a violation of subsection (1) of this section is a second, third or subsequent offense and the penalty that shall be imposed upon conviction for a violation of subsection (1) of this section.

(8) **Charging of subsequent offenses.** — For the purposes of determining how to impose the sentence for a second, third or subsequent conviction under this section, the indictment shall not be required to enumerate previous convictions. It shall only be necessary that the indictment state the number of times that the defendant has been convicted and sentenced within the past five (5) years under this section to determine if an enhanced penalty shall be imposed. The amount of fine and imprisonment imposed in previous convictions shall not be considered in calculating offenses to determine a second, third or subsequent offense of this section.

(9) **License eligibility for underage offenders.** — Any person under the legal age to obtain a license to operate a motor vehicle convicted under this section shall not be eligible to receive a driver's license until the person reaches the age of eighteen (18) years.

(10) **License suspensions and restrictions to run consecutively.** — Suspension or restriction of driving privileges for any person convicted of or nonadjudicated for violations of subsection (1) of this section shall run consecutively and not concurrently.

(11) **Ignition interlock.** — The court shall order installation and use of an ignition interlock device as provided in Section 63-11-31 for every vehicle operated by a person convicted or nonadjudicated under this section.

(12) **DUI child endangerment.** — A person over the age of twenty-one (21) who violates subsection (1) of this section while transporting in a motor vehicle a child under the age of sixteen (16) years is guilty of the separate offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired the person's ability to operate a motor vehicle. The offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired the person's ability to operate a motor vehicle shall not be merged with an offense of violating subsection (1) of this section for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished as follows:

(a) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a first conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than One Thousand Dollars (\$1,000.00) or shall be imprisoned for not more than twelve (12) months, or both;

(b) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a second conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00) or shall be imprisoned for one (1) year, or both;

(c) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a third or subsequent conviction shall be guilty of a felony and, upon conviction, shall be fined not less than Ten Thousand Dollars (\$10,000.00) or shall be imprisoned for not less than one (1) year nor more than five (5) years, or both; and



(d) A person who commits a violation of this subsection which results in the serious injury or death of a child, without regard to whether the offense was a first, second, third or subsequent offense, shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than Ten Thousand Dollars (\$10,000.00) and shall be imprisoned for not less than five (5) years nor more than twenty-five (25) years.

(13) **Expunction.** — (a) Any person convicted under subsection (2) or (3) of this section of a first offense of driving under the influence and who was not the holder of a commercial driver's license or a commercial learning permit may petition the circuit court of the county in which the conviction was had for an order to expunge the record of the conviction at least five (5) years after successful completion of all terms and conditions of the sentence imposed for the conviction. Expunction under this subsection will only be available to a person:

(i) Who has successfully completed all terms and conditions of the sentence imposed for the conviction;

(ii) Who did not refuse to submit to a test of his blood or breath;

(iii) Whose blood alcohol concentration tested below sixteen one-hundredths percent (.16%) if test results are available;

(iv) Who has not been convicted of and does not have pending any other offense of driving under the influence; and

(v) Who has provided the court with justification as to why the conviction should be expunged.

(b) A person is eligible for only one (1) expunction under this subsection, and the Department of Public Safety shall maintain a confidential registry of all cases of expunction under this subsection for the sole purpose of determining a person's eligibility as a first offender under this section.

(c) The court in its order of expunction shall state in writing the justification for which the expunction was granted and forward the order to the Department of Public Safety within five (5) days of the entry of the order.

(14) **Nonadjudication.** — (a) For the purposes of this chapter, "nonadjudication" means that the court withholds adjudication of guilt, either at the conclusion of a trial on the merits, or upon the entry of a plea of guilt by a defendant. Nonadjudication must be conditioned upon the successful completion of any conditions imposed by the court under this subsection.

(b) The court may rule that a qualifying first offense under subsection (1) or (3) of this section be nonadjudicated. A person is eligible for nonadjudication only one (1) time. A qualifying first offense is one where a breath test was not refused unless the court provides written findings why nonadjudication is being allowed where a breath test was refused.

(c) Nonadjudication may be initiated upon the filing of a petition for nonadjudication or at any stage of the proceedings before conviction in the discretion of the court; the court may withhold adjudication of guilt, defer sentencing, and enter an order imposing requirements on the offender.

(i) The court shall order the person to:

1. Pay the nonadjudication fee imposed under Section 63-11-31;

2. Pay all fines, penalties and assessments that would have been imposed for conviction;

3. Attend and complete an alcohol safety education program as provided in Section 63-11-32;

4. Install an ignition interlock device on every motor vehicle driven by the person, obtain an interlock restricted license, and maintain that license for one hundred twenty (120) days; failure to obtain an interlock restricted license will result in a ninety-day driver's license suspension pursuant to Section 63-11-31; and

5. Obtain from the interlock vendor proof that the person has not had violations of an ignition interlock device.

(ii) Other conditions to be imposed by the court may include, but are not limited to, alcohol or drug screening, or both, proof that the person has not committed any other traffic violations while under court supervision, proof of immobilization or impoundment of vehicles owned by the offender if required, and attendance at a victim-impact panel.

(d) The court may enter an order of nonadjudication only if the court finds, after a hearing, that the offender has successfully completed all conditions imposed by law and the court.

(e) The clerk shall forward a record of every nonadjudicated case to the Department of Public Safety which shall maintain a confidential registry of all cases that are nonadjudicated as provided in this subsection (14). Judges and prosecutors involved in the trial of implied consent violations shall have access to the confidential registry for the purpose of determining whether a person has previously been the subject of a nonadjudicated case and is therefore ineligible for another nonadjudication. The Driver Services Bureau of the department shall have access to the confidential registry for the purpose of determining whether a person is eligible for a form of license not restricted to operating a vehicle equipped with an ignition interlock device.

**SOURCES:** Laws, 1981, ch. 491, § 6; Laws, 1983, ch. 466, §§ 7, 13; Laws, 1989, ch. 565, § 1; Laws, 1991, ch. 480, § 6; Laws, 1992, ch. 500, § 1; Laws, 1994, ch. 340, § 4; Laws, 1995, ch. 540, § 1; Laws, 1996, ch. 527, § 11; Laws, 1998, ch. 505, § 2; Laws, 2000, ch. 542, § 3; Laws, 2002, ch. 367, § 1; Laws, 2004, ch. 503, § 1; Laws, 2007, ch. 438, § 1; Laws of 2012, ch. 510, § 1; Laws, 2013, ch. 489, § 1; Laws, 2014, ch. 493, § 1, eff from and after July 1, 2014.

**Amendment Notes** — The 2014 amendment rewrote the section to revise the use of ignition interlock and nonadjudication in implied consent violations.

## JUDICIAL DECISIONS

9. Sufficiency of evidence.

11. Double jeopardy.

14. Miscellaneous.

### 9. Sufficiency of evidence.

Where a defendant appealed her conviction and sentence for violating Miss. Code

Ann. § 63-11-30(5), the evidence presented established that defendant was under the influence, and the evidence of her erratic and dangerous driving established that she was driving negligently and that such driving resulted in the death of a passenger in another car. There was no



error in the denial of her motions for a judgment notwithstanding the verdict or for a new trial. *Faulkner v. State*, 131 So. 3d 1240 (Miss. Ct. App. 2014).

Although defendant produced evidence that his truck's power steering had been replaced, the manner in which he handled an incident he blamed on his power steering going out (failing to stop to inform anyone of the incident) supported a finding that defendant was under the influence at the time he hit mailboxes and a boat. *Chapman v. State*, 126 So. 3d 959 (Miss. Ct. App. 2013).

Evidence supported defendant's conviction of felony driving under the influence causing death because (1) surveillance videos showed that defendant consumed six beers at a casino in a two hour period; (2) defendant, upon leaving the casino, turned defendant's vehicle into an oncoming vehicle; (3) a passenger in the other vehicle was killed; (4) a police officer testified that defendant showed signs of intoxication; and (5) defendant's blood contained .14 percent concentration of alcohol. *Andino v. State*, 125 So. 3d 700 (Miss. Ct. App. 2013).

Sufficient evidence was presented to allow a reasonable and fair-minded juror to find that defendant operated a motor vehicle under circumstances indicating that he was impaired by alcohol because defendant testified that he had consumed alcohol on the day he was arrested, and the State presented testimony that several empty beer cans and a half-full beer can were found in his car and that he smelled like alcohol when he was pulled over. *Young v. State*, 119 So. 3d 309 (Miss. 2013).

There was not a sufficient factual basis, pursuant to Miss. Unif. Cir. & Cty. R. 8.04, to support defendant's guilty plea to driving under the influence (DUI) manslaughter and DUI mayhem because there was no factual basis that defendant had been driving in the county where the accident occurred, that defendant was impaired by controlled substances while defendant was driving, and that defendant performed a negligent act that caused one child's death and another child's serious bodily injury in an auto accident. *Porter v. State*, 126 So. 3d 68 (Miss. Ct. App. 2013).

Evidence supported defendant's driving under the influence conviction because defendant admitted to having been drinking, defendant's performance on field sobriety tests suggested that defendant was impaired, and a video of defendant at a police department waiting to take an Intoxilyzer breath exam depicted defendant as unsteady, eventually losing balance and falling off a stool, while defendant presented part of the video of what defendant alleged was a seizure, without any other support. *Carlson v. City of Ridgeland*, 131 So. 3d 1220 (Miss. Ct. App. 2013), writ of certiorari denied by 132 So. 3d 579, 2014 Miss. LEXIS 112 (Miss. 2014).

Evidence was sufficient to support defendant's driving under the influence conviction where two police officers smelled alcohol emitting from defendant's vehicle, defendant exhibited physical signs of impairment during field sobriety tests, and defendant refused to submit to an Intoxilyzer test, which was admissible pursuant to Miss. Code Ann. § 63-11-41. *Lobo v. City of Ridgeland*, 135 So. 3d 148 (Miss. Ct. App. 2013).

Evidence was sufficient to convict defendant of DUI, first offense, even without the results of a breathalyzer test, where the arresting officer testified defendant admitted to drinking five alcoholic beverages, he smelled like alcohol, his speech was slurred, he swayed while standing, and his eyes were bloodshot and watery. *Ludwig v. State*, 122 So. 3d 1229 (Miss. Ct. App. 2013).

Trial court did not err in denying defendant's motion for judgment notwithstanding the verdict because ample evidence was offered in the form of testimony from the sole testifying witness, a police officer, with regard to defendant's condition on the morning in question; the officer's observations of defendant during the field-sobriety tests were ample proof that defendant's ability to operate her motor vehicle had been impaired by her admitted consumption of alcohol. *Huhn v. City of Brandon*, 121 So. 3d 947 (Miss. Ct. App. 2013).

### 11. Double jeopardy.

Double Jeopardy Clause was not violated because the drunk-driving statute



established separate crimes for each of the victims identified and the offense of leaving the scene of an accident contained different elements from the offenses established by the drunk-driving statute. *Buckner v. State*, 135 So. 3d 915 (Miss. Ct. App. 2013), writ of certiorari denied by 136 So. 3d 437, 2014 Miss. LEXIS 201 (Miss. 2014).

#### 14. Miscellaneous.

County court did not apply an improper standard of law when convicting defendant of common-law driving under the influence because its determination of defendant's guilt was well-founded both on the law and the evidence. *Huhn v. City of Brandon*, 121 So. 3d 947 (Miss. Ct. App. 2013).

### **§ 63-11-31. Interlock restricted license; ignition interlock device; impoundment or immobilization of vehicles; use of Interlock Device Fund to offset cost of device installation and operation by indigent offenders; reinstatement of license without interlock restriction.**

**[Until October 1, 2014, this section shall read:]**

(1) In addition to the penalties authorized for any second or subsequent convictions of Section 63-11-30, the court shall order either the impoundment or immobilization of all vehicles registered to the person convicted for the entire length of license suspension to commence upon conviction and persist during the entire driver's license suspension period. However, a county, municipality, sheriff's department or the Department of Public Safety shall not be required to keep, store, maintain, serve as a bailee or otherwise exercise custody over a motor vehicle impounded under the provisions of this section.

(2)(a) If other licensed drivers living in the household are dependent upon the vehicle subject to impoundment or immobilization for necessary transportation, the court may order the installation of an ignition interlock system on the vehicle in lieu of impoundment or immobilization. Additionally, the court shall order the installation of an ignition interlock system on all vehicles registered to the person for a minimum period of six (6) months to occur upon reinstatement of the person's driver's license if the court determines it is a vehicle to which the person has access and which should be subject to ignition interlock. The cost associated with impoundment, immobilization or ignition interlock shall be paid by the person convicted. For the purpose of this section, "ignition interlock device" means a device which connects a motor vehicle ignition system to a breath-alcohol analyzer and prevents a motor vehicle ignition from starting if the driver's blood alcohol level exceeds the calibrated setting on the device.

(b) A person may not tamper with, or in any way attempt to circumvent the immobilization or impoundment of vehicles ordered by the court. A violation of this paragraph (b) is a misdemeanor and upon conviction the violator shall be fined an amount not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00) or imprisoned for not more than one (1) year or both.

(c) When a court orders a person to operate only a motor vehicle which is equipped with a functioning ignition interlock device, the court shall establish a specific calibration setting no lower than two one-hundredths percent (.02%) nor more than four one-hundredths percent (.04%) blood alcohol concentration at which the ignition interlock device will prevent the motor vehicle from being started.

(d) Upon ordering use of an ignition interlock device, the court shall:

(i) State on the record the requirement for and the period of use of the device, and so notify the Department of Public Safety;

(ii) Direct that the records of the department reflect that the person may not operate a motor vehicle that is not equipped with an ignition interlock device;

(iii) Direct the department to attach or imprint a notation on the driver's license of any person restricted under this section stating that the person may operate only a motor vehicle equipped with an ignition interlock device;

(iv) Require proof of the installation of the device and periodic reporting by the person for verification of the proper operation of the device;

(v) Require the person to have the system monitored for proper use and accuracy by an entity approved by the department at least semiannually, or more frequently as the circumstances may require;

(vi) Require the person to pay the reasonable cost of leasing or buying, monitoring, and maintaining the device, and may establish a payment schedule therefore.

(e)(i)1. A person prohibited under this section from operating a motor vehicle that is not equipped with an ignition interlock device may not solicit or have another person attempt to start or start a motor vehicle equipped with such a device.

2. A person may not attempt to start or start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to a person who is prohibited under this section from operating a motor vehicle that is not equipped with an ignition interlock device.

3. A person may not tamper with, or in any way attempt to circumvent, the operation of an ignition interlock device that has been installed in a motor vehicle.

4. A person may not knowingly provide a motor vehicle not equipped with a functioning ignition interlock device to another person who the provider of such vehicle knows or should know is prohibited from operating a motor vehicle not equipped with an ignition interlock device.

(ii) A violation of this paragraph (e) is a misdemeanor and upon conviction the violator shall be fined an amount not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00) or imprisoned for not more than one (1) year, or both.

(iii) A person shall not be in violation of this paragraph (e) if:

1. The starting of a motor vehicle equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle, and the person subject to the court order does not operate the vehicle; or

2. The court finds that a person is required to operate a motor vehicle in the course and scope of the person's employment. If the vehicle is owned by the person's employer, the person may operate that vehicle during regular working hours for the purposes of employment without installation of an ignition interlock device if the employer has been notified of such driving privilege restriction and if proof of that notification is kept with the vehicle at all times. This employment exemption does not apply if the business entity that owns the vehicle is owned or controlled by the person who is prohibited from operating the motor vehicle not equipped with an ignition interlock device.

(f)(i) A judge may also order that the vehicle owned or operated by a person or a family member of any person who committed a violation of Section 63-11-30 be equipped with an ignition interlock device for all or a portion of the time the driver's license of the operator of such vehicle is suspended or restricted pursuant to this section, if:

1. The operator of the vehicle used to violate Section 63-11-30 has at least one (1) prior conviction for driving a motor vehicle when such person's privilege to do so is cancelled, suspended or revoked as provided by Section 63-11-30; or

2. The driver's license of the operator of such vehicle was cancelled, suspended or revoked at the time of the violation of Section 63-11-30.

(ii) The provisions of this paragraph (f) shall not apply if the vehicle used to commit the violation of Section 63-11-30, was, at the time of such violation, rented or stolen.

(3) The provisions of this section are supplemental to the provisions of Section 63-11-30.

**[From and after October 1, 2014, this section shall read:]**

(1)(a) The provisions of this section are supplemental to the provisions of Section 63-11-30.

(b)(i) "Ignition interlock device" means a device approved by the Department of Public Safety that connects a motor vehicle ignition system to a breath-alcohol analyzer and prevents a motor vehicle ignition from starting if the driver's blood alcohol level exceeds the calibrated setting on the device.

(ii) "Interlock restricted license" means a driver's license bearing a restriction that limits the person to operation of vehicles equipped with an ignition interlock device.

(c) A person who can exercise the privilege of driving only under an interlock restricted license:



(i) Must have an ignition interlock device installed and operating on all motor vehicles driven by the person; or

(ii) If the person does not obtain an interlock restricted license within fifteen (15) days after the department receives the court abstract of a conviction or other order affecting the person's privilege to drive under Section 63-11-30:

1. The Department of Public Safety must suspend the person's driving privilege; notice of the suspension shall be given as provided in Section 63-1-52; and

2. For a second or subsequent violation of Section 63-11-30, all motor vehicles owned by the person must be either impounded or immobilized as provided in subsection (6) of this section.

(d) A person who installs an ignition interlock device and obtains an interlock restricted license before conviction or nonadjudication shall be given credit for the time period the ignition interlock device has been in use at the time of sentencing or nonadjudication.

(2)(a) The cost of installation and operation of an ignition interlock device shall be borne by the person to whom an interlock-restricted driver's license is issued unless the person is determined to be indigent.

(b)(i) A person convicted under Section 63-11-30 shall be assessed by the court, in addition to the criminal fines, penalties and assessments provided by law for violations of Section 63-11-30, a fee of Fifty Dollars (\$50.00), to be deposited in the Interlock Device Fund in the State Treasury.

(ii) A person nonadjudicated under Section 63-11-30 shall be assessed by the court, in addition to the criminal fines, penalties and assessments provided by law for violations of Section 63-11-30, a fee of Two Hundred Fifty Dollars (\$250.00) to be deposited in the Interlock Device Fund in the State Treasury.

(3)(a) The Department of Public Safety shall promulgate rules and regulations for the use of an ignition interlock device. The Department of Public Safety shall approve which vendors shall be used to furnish the systems, may assess fees to the vendors, and shall prescribe the maximum costs to the offender for installation, removal, monthly operation, periodic inspections, calibrations and repairs.

(b) A person who has an ignition interlock device installed in a vehicle shall:

(i) Provide proof of the installation of the device and periodic reporting for verification of the proper operation of the device;

(ii) Have the system monitored for proper use and accuracy as required by departmental regulation;

(iii) Pay the reasonable cost of leasing or buying, monitoring, and maintaining the device unless the person is determined to be indigent.

(4)(a)(i) A person who is limited to driving only under an interlock-restricted driver's license shall not operate a vehicle that is not equipped with an ignition interlock device.

(ii) A person prohibited from operating a motor vehicle that is not equipped with an ignition interlock device may not solicit or have another person attempt to start or start a motor vehicle equipped with such a device.

(iii) A person may not start or attempt to start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to a person who is prohibited from operating a motor vehicle that is not equipped with an ignition interlock device.

(iv) A person may not tamper with, or in any way attempt to circumvent, the operation of an ignition interlock device that has been installed in a motor vehicle.

(v) A person may not knowingly provide a motor vehicle not equipped with a functioning ignition interlock device to another person who the provider of the vehicle knows or should know is prohibited from operating a motor vehicle not equipped with an ignition interlock device.

(b) A violation of this subsection (4) is a misdemeanor and upon conviction the violator shall be fined an amount not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00) or imprisoned for not more than one (1) year, or both, unless the starting of a motor vehicle equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle, and the person subject to the restriction does not operate the vehicle.

(5)(a) In order to obtain an interlock restricted license, a person must:

(i) Be otherwise qualified to operate a motor vehicle, and will be subject to all other restrictions on the privilege to drive provided by law;

(ii) Submit proof that an ignition interlock device is installed and operating on all motor vehicles driven by the person; and

(iii) Pay the fee set forth in Section 63-1-43 to obtain the license.

(b)(i) If the person's privilege to drive has been suspended due to the person's violation of Section 63-11-30, the person must also pay the reinstatement fee set forth in Section 63-1-46(2)(a).

(ii) If the person obtains an interlock restricted license before suspension of the driving privilege is imposed, the reinstatement fee will not be assessed.

(6)(a) In addition to the penalties authorized for any second or subsequent conviction under Section 63-11-30, the court shall order that all vehicles owned by the offender that are not equipped with an ignition interlock device must be either impounded or immobilized pending further order of the court lifting the offender's driving restriction. However, no county, municipality, sheriff's department or the Department of Public Safety shall be required to keep, store, maintain, serve as a bailee or otherwise exercise custody over a motor vehicle impounded under the provisions of this section. The cost associated with any impoundment or immobilization shall be paid by the person convicted without regard to ability to pay.

(b) A person may not tamper with, or in any way attempt to circumvent, vehicle immobilization or impoundment ordered by the court under this

section. A violation of this paragraph (b) is a misdemeanor and upon conviction the violator shall be fined an amount not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00) or imprisoned for not more than one (1) year, or both.

(7)(a) The Department of Public Safety shall promulgate rules and regulations for the use of monies in the Interlock Device Fund to offset the cost of device installation and operation by indigent offenders.

(b) Indigence shall be determined based on proof of enrollment in one or more of the following types of public assistance:

- (i) Temporary Assistance for Needy Families (TANF);
- (ii) Medicaid assistance;
- (iii) The Supplemental Nutritional Assistance Program (SNAP), also known as “food stamps”;
- (iv) Supplemental security income (SSI);
- (v) Participation in a federal food distribution program;
- (vi) Federal housing assistance;
- (vii) Unemployment compensation; or
- (viii) Other criteria approved by the department.

(c) No more than ten percent (10%) of the money in the Interlock Device Fund in any fiscal year shall be expended by the department for the purpose of administering the fund.

(d)(i) Money in the Interlock Device Fund will be appropriated to the department to cover part of the costs of installing, removing and leasing ignition interlock devices for indigent people who are required, pursuant to a conviction or nonadjudication under Section 63-11-30, to install an ignition interlock device in all vehicles driven by the person.

(ii) If money is available in the Interlock Device Fund, the department shall pay to the vendor, for one (1) vehicle per offender, up to Fifty Dollars (\$50.00) for the cost of installation, up to Fifty Dollars (\$50.00) for the cost of removal, and up to Thirty Dollars (\$30.00) monthly for verified active usage of the ignition interlock device. The department shall not pay any amount above what an offender would be required to pay for the installation, removal or usage of an ignition interlock device.

(8) In order to reinstate a form of driver’s license that is not restricted to operation of an ignition interlock equipped vehicle, the person must:

- (a) Submit proof of successful completion of an alcohol safety program as provided in Section 63-11-32 if so ordered by the court;
- (b) Pay the reinstatement fee required under Section 63-1-46(1)(a);
- (c) Pay the driver’s license fee required under Section 63-1-43.

**SOURCES:** Laws, 2000, ch. 542, § 1; Laws, 2001, ch. 477, § 1; Laws, 2013, ch. 489, § 2; Laws, 2014, ch. 493, § 2, eff from and after July 1, 2014.

**Joint Legislative Committee Note** — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (2)(b)(ii) by inserting “Interlock Device” preceding “Fund” near the end. The Joint Committee ratified the correction at its July 24, 2014, meeting.



**Amendment Notes** — The 2014 amendment added (1)(a), (1)(c), and (1)(d) and redesignated former (1) as present (1)(b)(i); in (1)(b)(i), deleted “For the purpose of this section” from the beginning and inserted “approved by the Department of Public Safety” following “means a device”; rewrote (2) and (3); in (4)(a)(i), deleted “ignition-” preceding “interlock-restricted driver’s”; deleted (4)(c) and (4)(c)(ii) and restructured former (4)(c)(i) as present (4)(b) inserting “unless” preceding “the starting of a motor vehicle”; deleted former (5) and (6) and added present (5), (6), (7), and (8).

### § 63-11-33. Interlock Device Fund; purpose; use of monies.

There is created in the State Treasury a special fund to be known as the Interlock Device Fund. The purpose of the fund shall be to provide funding for the Driver’s License Bureau of the Department of Public Safety and also to provide funding assistance for ignition interlock devices for persons determined to be unable to afford the installation and maintenance of an ignition interlock device. Monies from the fund shall be distributed by the State Treasurer upon warrants issued by the Department of Public Safety. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

- (a) Monies appropriated by the Legislature for the purposes of funding the Driver’s License Bureau;
- (b) The interest accruing to the fund;
- (c) Monies paid by a person for deposit into the fund under Section 63-11-31; and
- (d) Monies received from such other sources as may be provided by law.

**SOURCES:** Laws, 2014, ch. 493, § 5, eff from and after July 1, 2014.

**Editor’s Note** — A former 63-11-33 [Codes, 1942, §§ 8175-04, 8175-06, 8175-07; Laws, 1971, ch. 515, §§ 4, 6, 7; Repealed by Laws, 1981, ch. 491, § 16, effective from and after July 1, 1981] made it unlawful to operate a vehicle under the influence of intoxicating liquor, and provided the penalties where chemical test results were not available.

Laws of 2014, ch. 512, § 5, provides:

“SECTION 5. The State Fiscal Officer shall transfer all of the funds that are deposited into the Ignition Interlock Device Fund during fiscal year 2015 into the Drug Court Fund. This section shall stand repealed on July 1, 2015.”

### § 63-11-41. Admissibility in criminal prosecution of evidence of refusal to submit to chemical test.

#### JUDICIAL DECISIONS

##### 1. In general.

Evidence was sufficient to support defendant’s driving under the influence conviction where two police officers smelled alcohol emitting from defendant’s vehicle, defendant exhibited physical signs of im-

pairment during field sobriety tests, and defendant refused to submit to an Intoxilyzer test, which was admissible pursuant to Miss. Code Ann. § 63-11-41. *Lobo v. City of Ridgeland*, 135 So. 3d 148 (Miss. Ct. App. 2013).

## CHAPTER 15

## Motor Vehicle Safety — Responsibility

## § 63-15-3. Definitions.

## JUDICIAL DECISIONS

## 1. In general.

It was proper to reverse a summary judgment entered for an insurer in a passenger's suit seeking a declaration that a policy covered the default judgment he obtained against the insured's son because the policy did not comply with minimum-liability coverage requirements; an insurer may not issue an insurance card for use as proof of coverage unless the policy complies with minimum statutory requirements, and if the policy provides no liability coverage for certain drivers, it does not comply. *Lyons v. Direct Gen. Ins. Co.*, 138 So. 3d 887 (Miss. 2014).

Mandatory liability insurance requirement pertains to vehicles, not owners or operators; every vehicle operated within the State must have the statutorily required minimum-coverage requirements of \$ 25,000 for injury to one person, \$ 50,000 for injury to two or more people, and \$ 25,000 for property damage, and a liability policy that purports to exclude that coverage for certain drivers fails to comply with the statutory mandate. *Lyons v. Direct Gen. Ins. Co.*, 138 So. 3d 887 (Miss. 2014).

## § 63-15-4. Insurance card; exemptions; card to be kept in vehicle; insurance company to provide; penalty.

## JUDICIAL DECISIONS

## 1. In general.

Legislature possesses the sole power to authorize exclusions, and automobile insurers are not free to escape the statutorily required minimum-liability coverage simply by inserting an exclusion of their choice, no matter how well-reasoned, into their policies; arguments for exceptions to clear statutory requirements should be made to the Legislature, not the supreme court. *Lyons v. Direct Gen. Ins. Co.*, 138 So. 3d 887 (Miss. 2014).

Mandatory liability insurance requirement pertains to vehicles, not owners or operators; every vehicle operated within the State must have the statutorily required minimum-coverage requirements of \$ 25,000 for injury to one person, \$ 50,000 for injury to two or more people, and \$ 25,000 for property damage, and a

liability policy that purports to exclude that coverage for certain drivers fails to comply with the statutory mandate. *Lyons v. Direct Gen. Ins. Co.*, 138 So. 3d 887 (Miss. 2014).

It was proper to reverse a summary judgment entered for an insurer in a passenger's suit seeking a declaration that a policy covered the default judgment he obtained against the insured's son because the policy did not comply with minimum-liability coverage requirements; an insurer may not issue an insurance card for use as proof of coverage unless the policy complies with minimum statutory requirements, and if the policy provides no liability coverage for certain drivers, it does not comply. *Lyons v. Direct Gen. Ins. Co.*, 138 So. 3d 887 (Miss. 2014).

**§ 63-15-39. Certificate of insurance as proof of financial responsibility; residents.**

**JUDICIAL DECISIONS**

**1. In general.**

The court of appeals erred by applying the requirements of Miss. Code Ann. § 63-15-43 (Rev. 2013) because it applied only to policies certified under Miss. Code Ann.

§§ 63-15-39 and 63-15-41 (Rev. 2013), and neither party suggested that the liability policy was one certified under §§ 63-15-39 and 63-15-41 *Lyons v. Direct Gen. Ins. Co.*, 138 So. 3d 887 (Miss. 2014).

**§ 63-15-41. Certificate of insurance as proof of financial responsibility; nonresidents.**

**JUDICIAL DECISIONS**

**1. In general.**

The court of appeals erred by applying the requirements of Miss. Code Ann. § 63-15-43 (Rev. 2013) because it applied only to policies certified under Miss. Code Ann.

§§ 63-15-39 and 63-15-41 (Rev. 2013), and neither party suggested that the liability policy was one certified under §§ 63-15-39 and 63-15-41 *Lyons v. Direct Gen. Ins. Co.*, 138 So. 3d 887 (Miss. 2014).

**§ 63-15-43. Motor vehicle liability policy; definition; required provisions.**

**JUDICIAL DECISIONS**

**2. Applicability.**

Court of appeals erred by applying the requirements of Miss. Code Ann. § 63-15-43 (Rev. 2013) because it applied only to policies certified under Miss. Code Ann. §§ 63-15-39 and 63-15-41 (Rev. 2013), and neither party suggested that the liability policy was one certified under §§ 63-15-39 and 63-15-41. *Lyons v. Direct Gen. Ins. Co.*, 138 So. 3d 887 (Miss. 2014).

Court of appeals erred by applying the requirements of the statute because it applied only to policies certified under Miss. Code Ann. §§ 63-15-39 and 63-15-41, and neither party suggested that the liability policy was one certified under §§ 63-15-39 and 63-15-41. *Lyons v. Direct Gen. Ins. Co.*, 138 So. 3d 887 (Miss. 2014).

**CHAPTER 16**

**Public Safety Verification and Enforcement Act [Repealed effective July 1, 2018]**

**SEC.**

**63-16-13.**

Failure to maintain liability insurance; penalties; appeal; Uninsured Motorist Identification Fund [Repealed effective July 1, 2018].



**§ 63-16-13. Failure to maintain liability insurance; penalties; appeal; Uninsured Motorist Identification Fund [Repealed effective July 1, 2018].**

(1) If the owner of a motor vehicle being operated on the public roads, streets or highways of the State of Mississippi or registered in the State of Mississippi fails to have motor vehicle liability insurance in at least the minimum amounts required under Section 63-15-3(j), the Commissioner of Public Safety, the Commissioner of Revenue or a court of proper jurisdiction shall suspend the vehicle registration and/or the owner's or the operator's driving privilege and shall impose a civil penalty in an amount of Three Hundred Dollars (\$300.00) upon a first violation, in an amount of Four Hundred Dollars (\$400.00) upon a second violation and in an amount of Five Hundred Dollars (\$500.00) upon a third or subsequent violation. If suspended, the registration or driving privilege shall not be reinstated until the owner has motor vehicle liability insurance in at least the minimum amounts required under Section 63-15-3(j) and has paid the civil penalties imposed. Any person shall have the right to appeal any suspension or civil penalty under this section in a court of proper jurisdiction. If the matter is appealed and a violation is found, then the court shall not reduce, suspend or suspend the execution of any penalty imposed under the provisions of this subsection, in whole or in part. It shall be the duty of the county prosecuting attorney, an attorney employed under the provisions of Section 19-3-49, or in the event there is no such prosecuting attorney for the county, the duty of the district attorney to represent the state in any appeal held under this subsection. Civil penalties collected under this subsection shall be deposited into the special fund created under subsection (2) of this section. However, if the appeal of such civil penalty would be under the proper jurisdiction of a municipal court, One Hundred Dollars (\$100.00) of the funds from such civil penalty shall be deposited in the general fund of that municipality. If the appeal of such civil penalty would be under the proper jurisdiction of any of the courts of a county, One Hundred Dollars (\$100.00) of the funds from such civil penalty shall be deposited in the general fund of that county. A person convicted of a civil violation under this subsection (1) shall not be convicted of a criminal offense under Section 63-15-4(4) arising from the same incident.

(2)(a) There is created in the State Treasury a special fund to be designated as the "Uninsured Motorist Identification Fund." The fund shall consist of monies deposited therein as provided under subsection (1) of this section and monies from any other source designated for deposit into such fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited to the credit of the fund; however, one-half (½) of any monies in excess of the amount needed to defray the expenses and costs of the verification system created under Section 63-16-3 remaining in the fund at the end of a fiscal year shall be transferred to the Motor Vehicle Ad Valorem Tax Reduction Fund created

under Section 27-51-105, and one-half (½) of any monies in excess of the amount needed to defray the expenses and costs of the verification system created under Section 63-16-3 remaining in the fund at the end of a fiscal year shall be transferred to the Mississippi Trauma Care Systems Fund created under Section 41-59-75.

(b) Monies in the special fund may be used by the Department of Public Safety and the Department of Revenue, upon appropriation by the Legislature, only for the purpose of defraying expenses and costs for the motor vehicle insurance verification system created under Section 63-16-3. In addition, at any time during a fiscal year, if the Department of Public Safety determines that funds in the Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund created under Section 45-2-1 are insufficient, the department may request the State Fiscal Officer to transfer funds from the Uninsured Motorist Identification Fund. The State Fiscal Officer may make an appropriate transfer if he determines that the funds in the Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund are insufficient and the funds in the Uninsured Motorist Identification Fund will be sufficient for defraying the expenses and costs for the motor vehicle insurance verification system created under Section 63-16-3. Monies in the fund used for the purposes described in this paragraph (b) shall be in addition to other funds available from any other source for such purposes.

**SOURCES:** Laws, 2012, ch. 504, § 7; Laws, 2014, ch. 437, § 2, eff from and after July 1, 2014.

**Amendment Notes** — The 2014 amendment, in the first sentence of (1), substituted “violation” for “conviction” in three places; and added the second and third sentences in (2)(b).

CHAPTER 17

Manufacture, Sales and Distribution

Distribution and Sales .....	63-17-51
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DISTRIBUTION AND SALES

SEC.	
63-17-55.	Definitions.
63-17-73.	Offenses and penalties.
63-17-111.	Owner of dealership may appoint successor by written agreement; manufacturer or dealer must honor succession unless good cause shown; procedure for refusing to honor succession.
63-17-117.	Warranty or sales incentive audits to be conducted within certain amount of time after payment of disputed claim or end of incentive or rebate program; approved and paid claims not to be charged back to dealer absent fraud, improper repair, or failure to substantiate claim.
63-17-118.	Manufacturer or distributor to compensate motor vehicle dealer upon

termination, cancellation or nonrenewal of franchise or discontinuation of motor vehicle line or make or parts essential to line or make.

### § 63-17-55. Definitions.

The following words, terms and phrases, when used in the Mississippi Motor Vehicle Commission Law, shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) “Motor vehicle” means any motor-driven vehicle of the sort and kind required to have a Mississippi road or bridge privilege license, and shall include, but not be limited to, motorcycles. “Motor vehicle” shall also mean an engine, transmission, or rear axle manufactured for installation in a vehicle having as its primary purpose the transport of person or persons or property on a public highway and having a gross vehicle weight rating of more than sixteen thousand (16,000) pounds, whether or not attached to a vehicle chassis.

(b) “Motor vehicle dealer” means any person, firm, partnership, copartnership, association, corporation, trust or legal entity, not excluded by paragraph (c) of this section, who holds a bona fide contract or franchise in effect with a manufacturer, distributor or wholesaler of new motor vehicles, and a license under the provisions of the Mississippi Motor Vehicle Commission Law, and such duly franchised and licensed motor vehicle dealers shall be the sole and only persons, firms, partnerships, copartnerships, associations, corporations, trusts or legal entities entitled to sell and publicly or otherwise solicit and advertise for sale new motor vehicles as such.

(c) The term “motor vehicle dealer” does not include:

(i) Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;

(ii) Public officers while performing their duties as such officers;

(iii) Employees of persons, corporations or associations enumerated in paragraph (c)(i) of this section when engaged in the specific performance of their duties as such employees; or

(iv) A motor vehicle manufacturer operating a project as defined in Section 57-75-5(f)(iv)1; and the provisions of the Mississippi Motor Vehicle Commission Law shall not apply to:

1.a. Any lease by such a motor vehicle manufacturer of three (3) or fewer motor vehicles at any one time and related vehicle maintenance, of any line of vehicle produced by the manufacturer or its subsidiaries, to any one (1) employee of the motor vehicle manufacturer on a direct basis; or

b. Any sale or other disposition of such motor vehicles by the motor vehicle manufacturer at the end of a lease through direct sales to employees of the manufacturer or through an open auction or auction limited to dealers of the manufacturer’s vehicle line or its subsidiaries’ vehicle lines; or



2. Any sale or other disposition by such a motor vehicle manufacturer of motor vehicles for which the manufacturer obtained distinguishing number tags under Section 27-19-309(8).

(d) "New motor vehicle" means a motor vehicle which has not been previously sold to any person except a distributor or wholesaler or motor vehicle dealer for resale.

(e) "Ultimate purchaser" means, with respect to any new motor vehicle, the first person, other than a motor vehicle dealer purchasing in his capacity as such dealer, who in good-faith purchases such new motor vehicle for purposes other than for resale.

(f) "Retail sale" or "sale at retail" means the act or attempted act of selling, bartering, exchanging or otherwise disposing of a new motor vehicle to an ultimate purchaser for use as a consumer.

(g) "Motor vehicle salesman" means any person who is employed as a salesman by a motor vehicle dealer whose duties include the selling or offering for sale of new motor vehicles.

(h) "Commission" means the Mississippi Motor Vehicle Commission.

(i) "Manufacturer" means any person, firm, association, corporation or trust, resident or nonresident, who manufactures or assembles new motor vehicles.

(j) "Distributor" or "wholesaler" means any person, firm, association, corporation or trust, resident or nonresident, who, in whole or in part, sells or distributes new motor vehicles to motor vehicle dealers, or who maintains distributor representatives.

(k) "Factory branch" means a branch or division office maintained by a person, firm, association, corporation or trust who manufactures or assembles new motor vehicles for sale to distributors or wholesalers, to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives.

(l) "Distributor branch" means a branch or division office similarly maintained by a distributor or wholesaler for the same purposes a factory branch or division is maintained.

(m) "Factory representative" means a representative employed by a person, firm, association, corporation or trust who manufactures or assembles new motor vehicles, or by a factory branch, for the purpose of making or promoting the sale of his, its or their new motor vehicles, or for supervising or contacting his, its or their dealers or prospective dealers.

(n) "Distributor representative" means a representative similarly employed by a distributor, distributor branch or wholesaler.

(o) "Person" means and includes, individually and collectively, individuals, firms, partnerships, copartnerships, associations, corporations and trusts, or any other forms of business enterprise, or any legal entity.

(p) "Good faith" means the duty of each party to any franchise agreement, and all officers, employees or agents franchise, to act in a fair and equitable manner toward each other in the performance of the respective obligations under the franchise agreement.

(q) “Coerce” means to compel or attempt to compel by threat or duress. However, recommendation, exposition, persuasion, urging or argument shall not be deemed to constitute coercion.

(r) “Special tools” are those which a dealer was required to purchase by the manufacturer or distributor for service on that manufacturer’s product.

(s) “Motor vehicle lessor” means any person, not excluded by paragraph (c) of this section, engaged in the motor vehicle leasing or rental business.

(t) “Specialty vehicle” means a motor vehicle manufactured by a second stage manufacturer by purchasing motor vehicle components, e.g. frame and drive train, and completing the manufacturer of finished motor vehicles for the purpose of resale with the primary manufacturer warranty unimpaired, to a limited commercial market rather than the consuming public. Specialty vehicles include garbage trucks, ambulances, fire trucks, buses, limousines, hearses and other similar limited purpose vehicles as the commission may by regulation provide.

(u) “Auto auction” means (i) any person who provides a place of business or facilities for the wholesale exchange of motor vehicles by and between duly licensed motor vehicle dealers, (ii) any motor vehicle dealer licensed to sell used motor vehicles selling motor vehicles using an auction format but not on consignment, or (iii) any person who provides the facilities for or is in the business of selling in an auction format motor vehicles.

(v) “Motor home” means a motor vehicle that is designed and constructed primarily to provide temporary living quarters for recreational, camping or travel use.

(w) “Dealer-operator” means the individual designated in the franchise agreement as the operator of the motor vehicle dealership.

(x) “Franchise” or “franchise agreement” means a written contract or agreement between a motor vehicle dealer and a manufacturer or its distributor or factory branch by which the motor vehicle dealer is authorized to engage in the business of selling or leasing the specific makes, models or classifications of new motor vehicles marketed or leased by the manufacturer and designated in the agreement or any addendum to such agreement.

(y) “Net cost” means the price the motor vehicle dealer pays for new motor vehicles, supplies, parts, equipment, signs, furnishings and special tools, minus any applicable discounts or subsidies obtained by the motor vehicle dealer.

(z) “Line or make” means a collection of models, series, or groups of motor vehicles manufactured by or for a particular manufacturer, distributor or importer offered for sale, lease or distribution pursuant to a common trademark, service mark or brand name; however:

(i) Multiple brand names or marks may constitute a single line or make, but only when included in a common motor vehicle dealer agreement and the manufacturer, distributor or importer offers such vehicles bearing the multiple names of marks together only, and not separately, to its authorized motor vehicle dealers.

(ii) Motor vehicles bearing a common brand name or mark may constitute separate line or makes when such vehicles are of different

vehicle types or are intended for different types of use, provided that either:

1. The manufacturer has expressly defined or covered the subject line or makes of vehicles as separate and distinct line or makes in the applicable dealer agreements; or

2. The manufacturer has consistently characterized the subject vehicles as constituting separate and distinct line or makes to its dealer network.

(aa) "Site-control agreement" or "exclusive use agreement" means an agreement that, regardless of its name, title, form or the parties entering into it, has the effect of:

(i) Controlling the use and development of the premises of a motor vehicle dealer's franchise or facilities;

(ii) Requiring a motor vehicle dealer to establish or maintain an exclusive motor vehicle dealership facility on the premises of the motor vehicle dealer's franchise or facility;

(iii) Restricting the power or authority of the dealer or the lessor, if the motor vehicle dealer leases the dealership premises, to transfer, sell, lease, develop, redevelop or change the use of the dealership premises, whether by sublease, lease, collateral pledge of lease, right of first refusal to purchase or lease, option to purchase or lease or any similar arrangement; or

(iv) Establishing a valuation process or formula for the motor vehicle dealership premises that does not allow for the motor vehicle dealership premises to be transferred, sold or leased by the motor vehicle dealer at the highest and best use valuation for the motor vehicle dealership premises.

(bb) "Market area" means the area of responsibility set forth in the franchise agreement.

(cc) "Core parts" means those original vehicle manufacturer parts that are listed in the original vehicle manufacturer's or distributor's current parts catalog, for which there is a core charge and which are returnable to the manufacturer or distributor.

**SOURCES:** Codes, 1942, § 8071.7-03; Laws, 1970, ch. 478, § 3; Laws, 1982, ch. 392; reenacted, Laws, 1983, ch. 344, § 3; reenacted without change, Laws, 1991, ch. 305, § 3; Laws, 1994, ch. 399, § 2; Laws, 2000, ch. 418, § 8; Laws, 2000, 3rd Ex Sess, ch. 1, § 20; Laws, 2006, ch. 432, § 2; Laws, 2007, ch. 303, § 9; Laws, 2014, ch. 349, § 2, eff from and after July 1, 2014.

**Amendment Notes** — The 2014 amendment, in (c)(iv), deleted "or Section 57-75-5(f)(xxi)" following "as defined in Section 57-75-5(f)(iv)1"; in (e), inserted a hyphen in between the words "good faith"; in (p), inserted "agreement" after "franchise"; substituted "franchise" for "thereof"; substituted "in the performance of the respective obligations under the franchise agreement" for "so as to guarantee the one party freedom from coercion, intimidation or threats of coercion or intimidation from the other party. However, recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith"; in (q), substituted "to compel or attempt to compel by threat or duress" for "the failure to act in good faith in



performing or complying with any terms or provisions of the franchise or agreement”; and “coercion” for “a lack of good faith”; added (y), (z), (aa), (bb), and (cc) to the end; and inserted minor punctuation throughout.

### § 63-17-73. Offenses and penalties.

[Until October 1, 2014, this section shall read as follows:]

(1) It is unlawful and a misdemeanor:

(a) For any person, firm, association, corporation or trust to engage in business as, or serve in the capacity of, or act as a motor vehicle dealer, motor vehicle salesman, manufacturer, distributor, wholesaler, factory branch or division, distributor branch or division, wholesaler branch or division, factory representative or distributor representative, as such, in this state without first obtaining a license therefor as provided in the Mississippi Motor Vehicle Commission Law, regardless of whether or not the person, firm, association, corporation or trust maintains or has a place or places of business in this state. Any person, firm, association, corporation or trust engaging, acting or serving in more than one (1) of the capacities or having more than one (1) place where the business is carried on or conducted shall be required to obtain and hold a current license for each capacity and place of business.

(b) For a motor vehicle dealer or a motor vehicle salesman:

(i) To require a purchaser of a new motor vehicle, as a condition of sale and delivery thereof, to also purchase special features, appliances, equipment, parts or accessories not desired or requested by the purchaser. However, this prohibition shall not apply as to special features, appliances, equipment, parts or accessories which are already installed on the car when received by the dealer.

(ii) To represent and sell as a new motor vehicle any motor vehicle which has been used and operated for demonstration purposes or which is otherwise a used motor vehicle.

(iii) To resort to or use any false or misleading advertisement in connection with his business as a motor vehicle dealer or motor vehicle salesman.

(iv) To sell an extended service contract, extended maintenance plan or similar product that is not offered, endorsed or sponsored by a manufacturer or distributor without disclosing to the consumer, orally and in writing, that the offered product is not provided or supported by a manufacturer or distributor.

(c) For a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesaler branch or division, or officer, agent or other representative thereof, to coerce, or attempt to coerce, any motor vehicle dealer:

(i) To order or accept delivery of any motor vehicle or vehicles, appliances, equipment, parts or accessories therefor, or any other commodity or commodities which shall not have been voluntarily ordered by the motor vehicle dealer.

(ii) To order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of the motor vehicles as publicly advertised by the manufacturer thereof.

(iii) To order for any person any parts, accessories, equipment, machinery, tools, appliances or any commodity whatsoever.

(iv) To contribute or pay money or anything of value into any cooperative or other advertising program or fund.

(d) For a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesaler branch or division, or officer, agent or other representative thereof:

(i) To refuse to deliver in reasonable quantities and within a reasonable time after receipt of dealer's order to any duly licensed motor vehicle dealer having a franchise or contractual arrangement for the retail sale of new motor vehicles sold or distributed by such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division or wholesale branch or division, any motor vehicles as are covered by such franchise or contract specifically publicly advertised by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division or wholesale branch or division, to be available for immediate delivery. However, the failure to deliver any motor vehicle shall not be considered a violation of this subsection if the failure is due to acts of God, work stoppages or delays due to strikes or labor difficulties, freight embargoes or other causes over which the manufacturer, distributor or wholesaler, or any agent thereof, has no control.

(ii) To coerce, or attempt to coerce any motor vehicle dealer to enter into any agreement, with the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, or officer, agent or other representative thereof, or to do any other act prejudicial to the dealer by threatening to cancel any franchise or any contractual agreement existing between the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, and the dealer. However, good-faith notice to any motor vehicle dealer of the dealer's violation of any terms or provisions of the franchise or contractual agreement shall not constitute a violation of this subsection.

(iii) To terminate or cancel the franchise or selling agreement of any dealer without due cause. The nonrenewal of a franchise or selling agreement, without due cause, shall constitute an unfair termination or cancellation, regardless of the terms or provisions of such franchise or selling agreement. "Due cause" shall be defined as a breach by the dealer of a material provision of the franchise agreement which breach has not been cured within a reasonable time after the dealer has been given written notice of the breach. The burden of proving that due cause exists shall be upon the party attempting to terminate, cancel or not renew the franchise or selling agreement. The manufacturer, distributor, wholesaler,

distributor branch or division, factory branch or division, or wholesaler branch or division, or officer, agent or other representative thereof shall notify a motor vehicle dealer in writing, and forward a copy of the notice to the commission, of the termination or cancellation of the franchise or selling agreement of the dealer at least sixty (60) days before the effective date thereof, stating the specific grounds for such termination or cancellation. The manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, or officer, agent or other representative thereof shall notify a motor vehicle dealer in writing, and forward a copy of the notice to the commission, at least sixty (60) days before the contractual term of his franchise or selling agreement expires that the franchise or selling agreement will not be renewed, stating the specific grounds for the nonrenewal, in those cases where there is no intention to renew the franchise or selling agreement. In no event shall the contractual term of any franchise or selling agreement expire, without the written consent of the motor vehicle dealer involved, prior to the expiration of at least sixty (60) days following such written notice. Any motor vehicle dealer who receives written notice that his franchise or selling agreement is being terminated or cancelled or who receives written notice that his franchise or selling agreement will not be renewed, may, within the sixty-day notice period, file with the commission a verified complaint for its determination as to whether the termination or cancellation or nonrenewal is unfair within the purview of the Mississippi Motor Vehicle Commission Law, and the franchise agreement shall continue in effect until final determination of the issues raised in the complaint notwithstanding anything to the contrary contained in the law or in the franchise or selling agreement.

(iv) To require, attempt to require, coerce or attempt to coerce a dealer, by franchise agreement or otherwise, or as a condition to the renewal or continuation of a franchise agreement, to materially change the dealer's method of conducting business, not including its facilities, if the change would impose substantial and unreasonable financial hardship on the business of the motor vehicle dealer in light of the business objective of the proposed change, unless the change is voluntarily agreed to by the dealer for separate and valuable consideration.

(v) To offer to sell or to sell any new motor vehicle to any motor vehicle dealer at a lower actual price therefor than the actual price charged to any other motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device, including, but not limited to, sales promotion plans or programs which result in such lesser actual price. The provisions of this subparagraph shall not apply so long as a manufacturer, distributor or wholesaler, or any agent thereof, offers to sell or sells new motor vehicles to all motor vehicle dealers at the same price. This subparagraph shall not be construed to prevent the offering of volume discounts if such discounts are equally available to all franchised motor vehicle dealers of the same line or make in this state.



The provisions of this subsection shall not apply to sales to a motor vehicle dealer of any motor vehicle ultimately sold, donated or used by such dealer in a driver education program, to sales to a motor vehicle dealer for resale to any unit of government, federal, state or local, or to bona fide fleet sales.

(vi) To offer to sell or to sell parts and/or accessories to any new motor vehicle dealer for use in his own business for the purpose of repairing or replacing the same or a comparable part or accessory, at a lower actual price therefor than the actual price charged to any other new motor vehicle dealer for similar parts and/or accessories for use in his own business. However, it is recognized that certain motor vehicle dealers operate and serve as wholesalers of parts and accessories to retail outlets, and nothing herein contained shall be construed to prevent a manufacturer, distributor or wholesaler, or any agent thereof, from selling to a motor vehicle dealer who operates and serves as a wholesaler of parts and accessories, the parts and accessories as may be ordered by such motor vehicle dealer for resale to retail outlets, at a lower actual price than the actual price charged a motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories.

(vii) To prevent or attempt to prevent by contract or otherwise any motor vehicle dealer from changing the capital structure of his dealership or the means by or through which he finances the operation of his dealership, provided the motor vehicle dealer at all times meets any capital standards agreed to between the dealership and the manufacturer, distributor or wholesaler, provided such standards are deemed reasonable by the commission.

(viii) To prevent or attempt to prevent by contract or otherwise any motor vehicle dealer or any officer, partner or stockholder of any motor vehicle dealer from selling or transferring any part of the interest of any of them to any other person or persons or party or parties. However, no motor vehicle dealer, officer, partner or stockholder shall have the right to sell, transfer or assign the franchise or any right thereunder without the consent of the manufacturer, distributor or wholesaler which consent shall not be unreasonably withheld.

(ix) To condition unreasonably the renewal or extension of a franchise on a motor vehicle dealer's substantial renovation of the motor vehicle dealer's place of business or on the construction, purchase, acquisition or rental of a new place of business by the motor vehicle dealer. The manufacturer shall notify the motor vehicle dealer in writing of its intent to impose such a condition within a reasonable time prior to the effective date of the proposed renewal or extension, but in no case less than one hundred eighty (180) days prior to the renewal or extension. Upon receipt of written notification, a motor vehicle dealer shall have sixty (60) days to file a protest with the commission, and the manufacturer shall demonstrate to the commission the need for the demand in view of the need to service the public and the economic conditions existing in the motor

vehicle industry and the market area served by the motor vehicle dealer at the time the action would be required of the motor vehicle dealer. As part of any such condition the manufacturer shall offer the motor vehicle dealer a reasonable initial supply and model mix of motor vehicles to meet the sales levels necessary to support the increased overhead incurred by the motor vehicle dealer by reason of the renovation, construction, purchase or rental of a new place of business consistent with nationally applied standards.

(x) To require, coerce or attempt to coerce a motor vehicle dealer to refrain from participation in the management of, investment in, the acquisition of, or the current operation of any other line of motor vehicles or related products, as long as the motor vehicle dealer maintains a reasonable line of credit for each dealership and the motor vehicle dealer remains in substantial compliance with reasonable facilities' requirements of the manufacturer or distributor. The reasonable facilities' requirements may not include any requirement that a motor vehicle dealer establish or maintain exclusive facilities, personnel or display space when the requirements are unreasonable considering current economic conditions in the market area and not otherwise justified by reasonable business considerations. The burden of proving by a preponderance of the evidence that the current economic conditions and reasonable business considerations justify exclusive facilities is on the manufacturer. Voluntary and noncoerced acceptance of such conditions by the motor vehicle dealer in writing for separate and valuable consideration shall not constitute a violation.

(xi) To fail or refuse to sell or offer to sell to all motor vehicle dealers in a line or make, every motor vehicle sold or offered for sale under the franchise agreement to any motor vehicle dealer of the same line or make; or to unreasonably require a motor vehicle dealer to pay an extra fee, purchase unreasonable advertising displays or any other materials, or to unreasonably require the dealer-operator to remodel, renovate or recondition its existing facilities as a prerequisite to receiving a certain model or series of vehicles. However, the failure to deliver any such motor vehicle shall not be considered a violation of this section if the failure is not arbitrary and is due to a lack of manufacturing capacity or to a strike or labor difficulty, a shortage of materials, a freight embargo or other cause of which the manufacturer or distributor has no control. This provision shall not apply to manufacturers of recreational vehicles.

(xii) To condition the sale, transfer, relocation or renewal of a franchise or dealer agreement or to condition sales, services, parts or finance incentives upon site-control agreement; however, voluntary and noncoerced acceptance of such conditions by the motor vehicle dealer in writing, shall not constitute a violation.

(xiii) To assign or change a motor vehicle dealer's market area under the franchise or motor vehicle dealer's agreement arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales

and registrations within the motor vehicle dealer's market area, and without first having provided the motor vehicle dealer's with written notice of the change in the motor vehicle dealer's market area and a detailed description of the change and reasons therefor.

(xiv) To attempt to coerce, or coerce, a motor vehicle dealer to adhere to performance standards that are not applied uniformly to other similarly situated motor vehicle dealers.

(xv) To establish any performance standard or program for measuring motor vehicle dealer's performance that may have a material impact on a motor vehicle dealer that is not fair, reasonable and equitable, or applying any such standard or program to a motor vehicle dealer in a manner that is not fair, reasonable and equitable. If dealership performance standards are based on a survey, the manufacturer or distributor shall establish the objectivity of the survey process and provide this information to any motor vehicle dealer covered by the survey request. Within fifteen (15) business days of a request by the motor vehicle dealer, a manufacturer shall disclose in writing to the motor vehicle dealer a description of the performance standard or program and all relevant information used in the application of the performance standard or program to that motor vehicle dealer unless the manufacturer has already provided the information.

(xvi) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered for the ultimate purchasers prior to the motor vehicle dealer's receipt of written official price increase notification. A sales contract signed by the ultimate purchaser that includes model and firm price shall constitute evidence of each such order provided that the vehicle is in fact delivered to that purchaser.

(xvii) To attempt to require, coerce or attempt to coerce any new motor vehicle dealer to sell, offer to sell or sell exclusively an extended service contract, extended maintenance plan or similar product, including, without limitation, GAP products, offered, endorsed or sponsored by the manufacturer or distributor by any of the following means:

1. By an act or statement made by the manufacturer or distributor that will adversely impact the motor vehicle dealer whether it is express or implied; or

2. By a provision in a franchise agreement that the motor vehicle dealer shall sell, offer to sell or sell exclusively an extended service contract, extended warranty plan or similar product offered, endorsed or sponsored by the manufacturer or distributor; or

3. By measuring the motor vehicle dealer's performance under the franchise agreement based on the sale of extended service contracts, extended maintenance plans or similar products offered, endorsed or sponsored by the manufacturer or distributor; or

4. By requiring the motor vehicle dealer to actively promote the sale or extended service contracts, extended maintenance plans or similar products offered, endorsed or sponsored by the manufacturer or distributor.



Nothing in this subparagraph shall prohibit a manufacturer or distributor from providing incentive programs to a new motor vehicle dealer who makes the voluntary decision to offer to sell, sell or sell exclusively an extended service contract, extended maintenance plan or similar product offered, endorsed or sponsored by the manufacturer or distributor.

(xviii) To require a motor vehicle dealer to provide its customer lists or service files to the manufacturer or distributor, unless necessary for the sale and delivery of a new motor vehicle to a consumer, to validate and pay consumer or dealer incentives, for reasonable marketing purposes, for evaluation of dealer performance, for analytics or for the submission to the franchisor for any services supplied by the franchisee for any claim for warranty parts or repairs. Nothing in this section shall limit the franchisor's ability to require or use customer information to satisfy any safety or recall notice obligation or other legal obligation.

(xix) To release or cause to be released a motor vehicle dealer's nonpublic customer information to another motor vehicle dealer unless the franchise has been terminated, the customer has relocated to an address that is outside of the motor vehicle dealer's market area, the customer has transacted business with another motor vehicle dealer of the same brand, a customer has not transacted with the dealer from which a vehicle was purchased for a period of nine (9) months, or the motor vehicle dealer consents to the sharing of customer information with other dealers.

(xx) To coerce, attempt to coerce, require or attempt to require any motor vehicle dealer to provide installment financing with a specified financial institution.

(2) Concerning any sale of a motor vehicle or vehicles to the State of Mississippi, or to the several counties or municipalities thereof, or to any other political subdivision thereof, no manufacturer, distributor or wholesaler shall offer any discounts, refunds, or any other similar type inducements to any dealer without making the same offer or offers to all other of its dealers within the state. If the inducements above mentioned are made, the manufacturer, distributor or wholesaler shall give simultaneous notice thereof to all of its dealers within the state.

(3) It is unlawful to be a broker. For the purpose of this subsection, "broker" means a person who, for a fee, commission or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle, and who is not:

- (a) A new motor vehicle dealer or agent or employee of such a dealer; or
- (b) A distributor or an agent or employee of such a distributor.

However, an individual shall not be deemed to be a broker if he or she is the owner of the new or used motor vehicle which is the object of the brokering transaction.

**[From and after October 1, 2014, this section shall read as follows:]**

- (1) It is unlawful and a misdemeanor:

(a) For any person, firm, association, corporation or trust to engage in business as, or serve in the capacity of, or act as a motor vehicle dealer, motor vehicle salesman, manufacturer, distributor, wholesaler, factory branch or division, distributor branch or division, wholesaler branch or division, factory representative or distributor representative, as such, in this state without first obtaining a license therefor as provided in the Mississippi Motor Vehicle Commission Law, regardless of whether or not the person, firm, association, corporation or trust maintains or has a place or places of business in this state. Any person, firm, association, corporation or trust engaging, acting or serving in more than one (1) of the capacities or having more than one (1) place where the business is carried on or conducted shall be required to obtain and hold a current license for each capacity and place of business.

(b) For a motor vehicle dealer or a motor vehicle salesman:

(i) To require a purchaser of a new motor vehicle, as a condition of sale and delivery thereof, to also purchase special features, appliances, equipment, parts or accessories not desired or requested by the purchaser. However, this prohibition shall not apply as to special features, appliances, equipment, parts or accessories which are already installed on the car when received by the dealer.

(ii) To represent and sell as a new motor vehicle any motor vehicle which has been used and operated for demonstration purposes or which is otherwise a used motor vehicle.

(iii) To resort to or use any false or misleading advertisement in connection with his business as a motor vehicle dealer or motor vehicle salesman.

(iv) To sell an extended service contract, extended maintenance plan or similar product that is not offered, endorsed or sponsored by a manufacturer or distributor without disclosing to the consumer, orally and in writing, that the offered product is not provided or supported by a manufacturer or distributor.

(c) For a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesaler branch or division, or officer, agent or other representative thereof, to coerce, or attempt to coerce, any motor vehicle dealer:

(i) To order or accept delivery of any motor vehicle or vehicles, appliances, equipment, parts or accessories therefor, or any other commodity or commodities which shall not have been voluntarily ordered by the motor vehicle dealer.

(ii) To order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of the motor vehicles as publicly advertised by the manufacturer thereof.

(iii) To order for any person any parts, accessories, equipment, machinery, tools, appliances or any commodity whatsoever.

(iv) To contribute or pay money or anything of value into any cooperative or other advertising program or fund.

This paragraph (c) shall not apply to manufacturers of motor homes governed by the provisions of Sections 63-17-201 through 63-17-221.

(d) For a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesaler branch or division, or officer, agent or other representative thereof:

(i) To refuse to deliver in reasonable quantities and within a reasonable time after receipt of dealer's order to any duly licensed motor vehicle dealer having a franchise or contractual arrangement for the retail sale of new motor vehicles sold or distributed by such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division or wholesale branch or division, any motor vehicles as are covered by such franchise or contract specifically publicly advertised by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division or wholesale branch or division, to be available for immediate delivery. However, the failure to deliver any motor vehicle shall not be considered a violation of this subsection if the failure is due to acts of God, work stoppages or delays due to strikes or labor difficulties, freight embargoes or other causes over which the manufacturer, distributor or wholesaler, or any agent thereof, has no control.

(ii) To coerce, or attempt to coerce any motor vehicle dealer to enter into any agreement, with the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, or officer, agent or other representative thereof, or to do any other act prejudicial to the dealer by threatening to cancel any franchise or any contractual agreement existing between the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, and the dealer. However, good-faith notice to any motor vehicle dealer of the dealer's violation of any terms or provisions of the franchise or contractual agreement shall not constitute a violation of this subsection.

(iii) To terminate or cancel the franchise or selling agreement of any dealer without due cause. The nonrenewal of a franchise or selling agreement, without due cause, shall constitute an unfair termination or cancellation, regardless of the terms or provisions of such franchise or selling agreement. "Due cause" shall be defined as a breach by the dealer of a material provision of the franchise agreement which breach has not been cured within a reasonable time after the dealer has been given written notice of the breach. The burden of proving that due cause exists shall be upon the party attempting to terminate, cancel or not renew the franchise or selling agreement. The manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, or officer, agent or other representative thereof shall notify a motor vehicle dealer in writing, and forward a copy of the notice to the commission, of the termination or cancellation of the franchise or selling agreement of the dealer at least sixty (60) days before the effective date thereof, stating the specific grounds for such termination or cancel-



lation. The manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, or officer, agent or other representative thereof shall notify a motor vehicle dealer in writing, and forward a copy of the notice to the commission, at least sixty (60) days before the contractual term of his franchise or selling agreement expires that the franchise or selling agreement will not be renewed, stating the specific grounds for the nonrenewal, in those cases where there is no intention to renew the franchise or selling agreement. In no event shall the contractual term of any franchise or selling agreement expire, without the written consent of the motor vehicle dealer involved, prior to the expiration of at least sixty (60) days following such written notice. Any motor vehicle dealer who receives written notice that his franchise or selling agreement is being terminated or cancelled or who receives written notice that his franchise or selling agreement will not be renewed, may, within the sixty-day notice period, file with the commission a verified complaint for its determination as to whether the termination or cancellation or nonrenewal is unfair within the purview of the Mississippi Motor Vehicle Commission Law, and the franchise agreement shall continue in effect until final determination of the issues raised in the complaint notwithstanding anything to the contrary contained in the law or in the franchise or selling agreement.

(iv) To require, attempt to require, coerce or attempt to coerce a dealer, by franchise agreement or otherwise, or as a condition to the renewal or continuation of a franchise agreement, to materially change the dealer's method of conducting business, not including its facilities, if the change would impose substantial and unreasonable financial hardship on the business of the motor vehicle dealer in light of the business objective of the proposed change, unless the change is voluntarily agreed to by the dealer for separate and valuable consideration.

(v) To offer to sell or to sell any new motor vehicle to any motor vehicle dealer at a lower actual price therefor than the actual price charged to any other motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device, including, but not limited to, sales promotion plans or programs which result in such lesser actual price. The provisions of this subparagraph shall not apply so long as a manufacturer, distributor or wholesaler, or any agent thereof, offers to sell or sells new motor vehicles to all motor vehicle dealers at the same price. This subparagraph shall not be construed to prevent the offering of volume discounts if such discounts are equally available to all franchised motor vehicle dealers of the same line or make in this state.

The provisions of this subsection shall not apply to sales to a motor vehicle dealer of any motor vehicle ultimately sold, donated or used by such dealer in a driver education program, to sales to a motor vehicle dealer for resale to any unit of government, federal, state or local, or to bona fide fleet sales.

(vi) To offer to sell or to sell parts and/or accessories to any new motor vehicle dealer for use in his own business for the purpose of repairing or

replacing the same or a comparable part or accessory, at a lower actual price therefor than the actual price charged to any other new motor vehicle dealer for similar parts and/or accessories for use in his own business. However, it is recognized that certain motor vehicle dealers operate and serve as wholesalers of parts and accessories to retail outlets, and nothing herein contained shall be construed to prevent a manufacturer, distributor or wholesaler, or any agent thereof, from selling to a motor vehicle dealer who operates and serves as a wholesaler of parts and accessories, the parts and accessories as may be ordered by such motor vehicle dealer for resale to retail outlets, at a lower actual price than the actual price charged a motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories.

(vii) To prevent or attempt to prevent by contract or otherwise any motor vehicle dealer from changing the capital structure of his dealership or the means by or through which he finances the operation of his dealership, provided the motor vehicle dealer at all times meets any capital standards agreed to between the dealership and the manufacturer, distributor or wholesaler, provided such standards are deemed reasonable by the commission.

(viii) To prevent or attempt to prevent by contract or otherwise any motor vehicle dealer or any officer, partner or stockholder of any motor vehicle dealer from selling or transferring any part of the interest of any of them to any other person or persons or party or parties. However, no motor vehicle dealer, officer, partner or stockholder shall have the right to sell, transfer or assign the franchise or any right thereunder without the consent of the manufacturer, distributor or wholesaler which consent shall not be unreasonably withheld.

(ix) To condition unreasonably the renewal or extension of a franchise on a motor vehicle dealer's substantial renovation of the motor vehicle dealer's place of business or on the construction, purchase, acquisition or rental of a new place of business by the motor vehicle dealer. The manufacturer shall notify the motor vehicle dealer in writing of its intent to impose such a condition within a reasonable time prior to the effective date of the proposed renewal or extension, but in no case less than one hundred eighty (180) days prior to the renewal or extension. Upon receipt of written notification, a motor vehicle dealer shall have sixty (60) days to file a protest with the commission, and the manufacturer shall demonstrate to the commission the need for the demand in view of the need to service the public and the economic conditions existing in the motor vehicle industry and the market area served by the motor vehicle dealer at the time the action would be required of the motor vehicle dealer. As part of any such condition the manufacturer shall offer the motor vehicle dealer a reasonable initial supply and model mix of motor vehicles to meet the sales levels necessary to support the increased overhead incurred by the motor vehicle dealer by reason of the renovation, construction, purchase or rental of a new place of business consistent with nationally applied standards.



(x) To require, coerce or attempt to coerce a motor vehicle dealer to refrain from participation in the management of, investment in, the acquisition of, or the current operation of any other line of motor vehicles or related products, as long as the motor vehicle dealer maintains a reasonable line of credit for each dealership and the motor vehicle dealer remains in substantial compliance with reasonable facilities' requirements of the manufacturer or distributor. The reasonable facilities' requirements may not include any requirement that a motor vehicle dealer establish or maintain exclusive facilities, personnel or display space when the requirements are unreasonable considering current economic conditions in the market area and not otherwise justified by reasonable business considerations. The burden of proving by a preponderance of the evidence that the current economic conditions and reasonable business considerations justify exclusive facilities is on the manufacturer. Voluntary and noncoerced acceptance of such conditions by the motor vehicle dealer in writing for separate and valuable consideration shall not constitute a violation.

(xi) To fail or refuse to sell or offer to sell to all motor vehicle dealers in a line or make, every motor vehicle sold or offered for sale under the franchise agreement to any motor vehicle dealer of the same line or make; or to unreasonably require a motor vehicle dealer to pay an extra fee, purchase unreasonable advertising displays or any other materials, or to unreasonably require the dealer-operator to remodel, renovate or recondition its existing facilities as a prerequisite to receiving a certain model or series of vehicles. However, the failure to deliver any such motor vehicle shall not be considered a violation of this section if the failure is not arbitrary and is due to a lack of manufacturing capacity or to a strike or labor difficulty, a shortage of materials, a freight embargo or other cause of which the manufacturer or distributor has no control. This provision shall not apply to manufacturers of recreational vehicles.

(xii) To condition the sale, transfer, relocation or renewal of a franchise or dealer agreement or to condition sales, services, parts or finance incentives upon site-control agreement; however, voluntary and noncoerced acceptance of such conditions by the motor vehicle dealer in writing, shall not constitute a violation.

(xiii) To assign or change a motor vehicle dealer's market area under the franchise or motor vehicle dealer's agreement arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the motor vehicle dealer's market area, and without first having provided the motor vehicle dealer's with written notice of the change in the motor vehicle dealer's market area and a detailed description of the change and reasons therefor.

(xiv) To attempt to coerce, or coerce, a motor vehicle dealer to adhere to performance standards that are not applied uniformly to other similarly situated motor vehicle dealers.

(xv) To establish any performance standard or program for measuring motor vehicle dealer's performance that may have a material impact



on a motor vehicle dealer that is not fair, reasonable and equitable, or applying any such standard or program to a motor vehicle dealer in a manner that is not fair, reasonable and equitable. If dealership performance standards are based on a survey, the manufacturer or distributor shall establish the objectivity of the survey process and provide this information to any motor vehicle dealer covered by the survey request. Within fifteen (15) business days of a request by the motor vehicle dealer, a manufacturer shall disclose in writing to the motor vehicle dealer a description of the performance standard or program and all relevant information used in the application of the performance standard or program to that motor vehicle dealer unless the manufacturer has already provided the information.

(xvi) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered for the ultimate purchasers prior to the motor vehicle dealer's receipt of written official price increase notification. A sales contract signed by the ultimate purchaser that includes model and firm price shall constitute evidence of each such order provided that the vehicle is in fact delivered to that purchaser.

(xvii) To attempt to require, coerce or attempt to coerce any new motor vehicle dealer to sell, offer to sell or sell exclusively an extended service contract, extended maintenance plan or similar product, including, without limitation, GAP products, offered, endorsed or sponsored by the manufacturer or distributor by any of the following means:

1. By an act or statement made by the manufacturer or distributor that will adversely impact the motor vehicle dealer whether it is express or implied; or

2. By a provision in a franchise agreement that the motor vehicle dealer shall sell, offer to sell or sell exclusively an extended service contract, extended warranty plan or similar product offered, endorsed or sponsored by the manufacturer or distributor; or

3. By measuring the motor vehicle dealer's performance under the franchise agreement based on the sale of extended service contracts, extended maintenance plans or similar products offered, endorsed or sponsored by the manufacturer or distributor; or

4. By requiring the motor vehicle dealer to actively promote the sale or extended service contracts, extended maintenance plans or similar products offered, endorsed or sponsored by the manufacturer or distributor.

Nothing in this subparagraph shall prohibit a manufacturer or distributor from providing incentive programs to a new motor vehicle dealer who makes the voluntary decision to offer to sell, sell or sell exclusively an extended service contract, extended maintenance plan or similar product offered, endorsed or sponsored by the manufacturer or distributor.

(xviii) To require a motor vehicle dealer to provide its customer lists or service files to the manufacturer or distributor, unless necessary for the

sale and delivery of a new motor vehicle to a consumer, to validate and pay consumer or dealer incentives, for reasonable marketing purposes, for evaluation of dealer performance, for analytics or for the submission to the franchisor for any services supplied by the franchisee for any claim for warranty parts or repairs. Nothing in this section shall limit the franchisor's ability to require or use customer information to satisfy any safety or recall notice obligation or other legal obligation.

(xix) To release or cause to be released a motor vehicle dealer's nonpublic customer information to another motor vehicle dealer unless the franchise has been terminated, the customer has relocated to an address that is outside of the motor vehicle dealer's market area, the customer has transacted business with another motor vehicle dealer of the same brand, a customer has not transacted with the dealer from which a vehicle was purchased for a period of nine (9) months, or the motor vehicle dealer consents to the sharing of customer information with other dealers.

(xx) To coerce, attempt to coerce, require or attempt to require any motor vehicle dealer to provide installment financing with a specified financial institution.

This paragraph (d) shall not apply to manufacturers of motor homes governed by the provisions of Sections 1 through 11 of this act.

(2) Concerning any sale of a motor vehicle or vehicles to the State of Mississippi, or to the several counties or municipalities thereof, or to any other political subdivision thereof, no manufacturer, distributor or wholesaler shall offer any discounts, refunds, or any other similar type inducements to any dealer without making the same offer or offers to all other of its dealers within the state. If the inducements above mentioned are made, the manufacturer, distributor or wholesaler shall give simultaneous notice thereof to all of its dealers within the state.

(3) It is unlawful to be a broker. For the purpose of this subsection, "broker" means a person who, for a fee, commission or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle, and who is not:

(a) A new motor vehicle dealer or agent or employee of such a dealer; or

(b) A distributor or an agent or employee of such a distributor.

However, an individual shall not be deemed to be a broker if he or she is the owner of the new or used motor vehicle which is the object of the brokering transaction.

**SOURCES:** Codes, 1942, § 8071.7-05; Laws, 1970, ch. 478, § 5; reenacted without change, Laws, 1983, ch. 344, § 12; reenacted without change, Laws, 1991, ch. 305, § 12; Laws, 1994, ch. 399, § 3; Laws, 2000, ch. 418, § 9; Laws, 2006, ch. 432, § 4; Laws, 2014, ch. 349, § 3; Laws, 2014, ch. 532, § 12, eff from and after Oct. 1, 2014.

**Joint Legislative Committee Note** — Section 3 of Chapter 349, Laws of 2014, effective from and after July 1, 2014 (approved March 17, 2014), amended this section. Section 12 of Chapter 532, Laws of 2014, effective from and after October 1, 2014 (approved April 24, 2014), also amended this section. As set out above, this section



reflects the language of Section 12 of Chapter 532, Laws of 2014, which contains language that specifically provides that it supersedes § 63-17-73 as amended by Chapter 349, Laws of 2014.

**Editor's Note** — Laws of 2014, ch. 532, § 16, provides:

“SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date.”

**Amendment Notes** — The first 2014 amendment (ch. 349), effective July 1, 2014, redesignated former (b)(1) through (b)(3) as (b)(i) through (b)(iii) and added (b)(iv); redesignated former (c)(1) through (c)(4) as (c)(i) through (c)(iv); rewrote (d) and changed its designation structure, adding new (d)(iv), (d)(xii), (d)(xiii), (d)(xv), (d)(xvii) through (d)(xx).

The second 2014 amendment (ch. 532), effective October 1, 2014, redesignated former (b)(1) through (b)(3) as (b)(i) through (b)(iii) and added (b)(iv); redesignated former (c)(1) through (c)(4) as (c)(i) through (c)(iv) and added the second paragraph; rewrote (d) and changed its designation structure, adding new (d)(iv), (d)(xii), (d)(xiii), (d)(xv), (d)(xvii) through (d)(xx).

**§ 63-17-111. Owner of dealership may appoint successor by written agreement; manufacturer or dealer must honor succession unless good cause shown; procedure for refusing to honor succession.**

**[Until October 1, 2014, this section shall read as follows:]**

(1) Notwithstanding the terms of any franchise agreement, any dealer-operator may appoint by will, or other written instrument, a designated successor to succeed in the ownership of the dealer-operator in the dealership upon the death or incapacity of the dealer-operator.

(2) Unless good cause exists for the refusal to honor the succession on the part of the manufacturer or distributor, any designated successor of a deceased or incapacitated dealer-operator of a dealership may succeed to the ownership of the motor vehicle dealership under the existing franchise agreement if:

(a) The designated successor gives the manufacturer or distributor written notice of his or her intention to succeed to the ownership of the motor vehicle dealership within sixty (60) days after the dealer-operator's death or incapacity; and

(b) The designated successor agrees to be bound by all the terms and conditions of the franchise agreement.

(3) The manufacturer or distributor may request, and the designated successor shall provide promptly upon such request, personal and financial data reasonably necessary to determine whether the succession should be honored.

(4)(a) If the manufacturer or distributor believes that good cause exists for refusing to honor the succession of a deceased or incapacitated dealer, the manufacturer or distributor may, not more than sixty (60) days following receipt of the notice of the designated successor's intent to succeed and receipt of such personal and financial data, serve upon the designated successor notice of its refusal to honor the proposed succession and of its



intent to terminate the existing franchise with the dealer-operator not earlier than six (6) months from the date such notice of refusal is served.

(b) Such notice shall state the specific grounds for the refusal to honor the succession.

(c) If such notice is not timely served upon the designated successor, the franchise agreement shall continue in effect subject to termination only as otherwise provided by the Mississippi Motor Vehicle Commission Law.

(5) In determining whether good cause for the refusal to honor the succession exists, the manufacturer or distributor has the burden of proving that the designated successor is not of good moral character or does not otherwise meet the manufacturer's or distributor's reasonable standards for a dealer-operator.

(6) If a manufacturer or distributor refuses to honor the succession to the ownership interest of a deceased or incapacitated dealer-operator for good cause, the manufacturer or distributor shall allow the designated successor a reasonable period of time, which shall not be less than six (6) months, in which to consummate the sale of the dealership.

**[From and after October 1, 2014, this section shall read as follows:]**

(1) Notwithstanding the terms of any franchise agreement, any dealer-operator may appoint by will, or other written instrument, a designated successor to succeed in the ownership of the dealer-operator in the dealership upon the death or incapacity of the dealer-operator.

(2) Unless good cause exists for the refusal to honor the succession on the part of the manufacturer or distributor, any designated successor of a deceased or incapacitated dealer-operator of a dealership may succeed to the ownership of the motor vehicle dealership under the existing franchise agreement if:

(a) The designated successor gives the manufacturer or distributor written notice of his or her intention to succeed to the ownership of the motor vehicle dealership within sixty (60) days after the dealer-operator's death or incapacity; and

(b) The designated successor agrees to be bound by all the terms and conditions of the sales and service agreement.

(3) The manufacturer or distributor may request, and the designated successor shall provide promptly upon such request, personal and financial data reasonably necessary to determine whether the succession should be honored.

(4)(a) If the manufacturer or distributor believes that good cause exists for refusing to honor the succession of a deceased or incapacitated dealer, the manufacturer or distributor may, not more than sixty (60) days following receipt of the notice of the designated successor's intent to succeed and receipt of such personal and financial data, serve upon the designated successor notice of its refusal to honor the proposed succession and of its intent to terminate the existing franchise with the dealer-operator not earlier than six (6) months from the date such notice of refusal is served.

(b) Such notice shall state the specific grounds for the refusal to honor the succession.

(c) If such notice is not timely served upon the designated successor, the franchise agreement shall continue in effect subject to termination only as otherwise provided by the Mississippi Motor Vehicle Commission Law.

(5) In determining whether good cause for the refusal to honor the succession exists, the manufacturer or distributor has the burden of proving that the designated successor is not of good moral character or does not otherwise meet the manufacturer's or distributor's reasonable standards for a dealer-operator.

(6) If a manufacturer or distributor refuses to honor the succession to the ownership interest of a deceased or incapacitated dealer-operator for good cause, the manufacturer or distributor shall allow the designated successor a reasonable period of time, which shall not be less than six (6) months, in which to consummate the sale of the dealership.

(7) Changes in the ownership of a new motor home dealership shall be governed by the provisions of Sections 63-17-201 through 63-17-221.

**SOURCES:** Laws, 2000, ch. 418, § 3; Laws, 2014, ch. 532, § 13, eff from and after Oct. 1, 2014.

**Editor's Note** — Laws of 2014, ch. 532, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

**Amendment Notes** — The 2014 amendment substituted "sales and service" for "franchise" in (2)(b) and added (7).

**§ 63-17-117. Warranty or sales incentive audits to be conducted within certain amount of time after payment of disputed claim or end of incentive or rebate program; approved and paid claims not to be charged back to dealer absent fraud, improper repair, or failure to substantiate claim.**

(1) Notwithstanding the terms of any franchise agreement, warranty and sales incentive audits of a motor vehicle dealer's records may be conducted by the manufacturer or distributor. Any audit for warranty parts or service compensation shall be performed within the twelve-month period immediately following the date of the payment of the disputed claim by the manufacturer or distributor. Any audit for sales incentives, service incentives, rebates or other forms of incentive compensation shall be performed within the twelve-month period immediately following the date of the payment of the disputed claim by the manufacturer or distributor or the end of the program during which the incentives, service incentives, rebates or other forms of incentives compensation were offered, whichever is later.

(2) No claim which has been approved and paid may be charged back to the motor vehicle dealer unless it can be shown by a preponderance of the evidence that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective conditions under



generally accepted standards of workmanship, or that the motor vehicle dealer failed to reasonably substantiate the repair in accordance with the manufacturer's or distributor's reasonable written claim requirement.

(3) A manufacturer or distributor shall not deny a claim based solely on a motor vehicle dealer's incidental failure to comply with a specific claim processing requirement such as a clerical error or other administrative technicality that does not call into question the legitimacy of a claim. A motor vehicle dealer may submit an amended or supplemental claim within the time and manner required by the manufacturer for sales incentives, service incentives, rebates or other forms of incentives compensation for up to sixty (60) days from the date on which such a claim was submitted or could have been submitted.

(4) Limitations on warranty parts, service compensation, sales incentive audits, rebates or other forms of incentive compensation, chargebacks for warranty parts or service compensation, and service incentives and chargebacks for sales compensation only, shall not be effective in the case of intentionally false or fraudulent claims.

**SOURCES:** Laws, 2000, ch. 418, § 6; Laws, 2014, ch. 349, § 4, eff from and after July 1, 2014.

**Amendment Notes** — The 2014 amendment in (1), substituted “twelve-month” for “eighteen month” and “twelve-month” for “24-month” and added “or the end ... whichever is later” in the last sentence; in (3), substituted “such as” for “that results in” and added “what does not ... have been submitted.” at the end.

**§ 63-17-118. Manufacturer or distributor to compensate motor vehicle dealer upon termination, cancellation or nonrenewal of franchise or discontinuation of motor vehicle line or make or parts essential to line or make.**

(1) Upon any termination, cancellation, refusal to continue, or refusal to renew any franchise or any discontinuation of any line or make of motor vehicle or parts essential to such line or make, the manufacturer or distributor shall pay reasonable compensation to the motor vehicle dealer as follows:

(a)(i) The motor vehicle dealer's net cost for any new, unused, undamaged, unregistered, unmodified and unsold vehicle with a gross vehicle weight rating of sixteen thousand (16,000) pounds or less of the current and prior model year with less than seven hundred fifty (750) miles on the odometer that is in the motor vehicle dealer's inventory and was purchased from the manufacturer or another motor vehicle dealer of the same line or make in the ordinary course of business.

(ii) The motor vehicle dealer's net cost for any new, unused, undamaged, unregistered, unmodified and unsold vehicle with a gross vehicle weight rate of more than sixteen thousand (16,000) pounds of the current and prior model year that is in the motor vehicle dealer's inventory and was purchased from the manufacturer or another motor vehicle dealer of the same line or make in the ordinary course of business.



(iii) The manufacturer or distributor shall have no obligation to repurchase a motor vehicle if the motor vehicle has been modified to the extent that the modifications are so significant as to void the manufacturer's warranty or has been substantially altered to the prejudice of the manufacturer or distributor. The manufacturer or distributor shall have no obligation to repurchase any parts used to modify the motor vehicle that were not produced by or for the manufacturer or distributor.

(b) The motor vehicle dealer's net cost of each new, unused and undamaged part or accessory listed in the manufacturer or distributor's current parts catalog and in the original, resalable merchandising packages. In the case of sheet metal, a comparable substitute for the original package shall be sufficient. New or reconditioned core parts shall be valued at their core value, listed in the original vehicle manufacturer's or distributor's current parts catalog. If the part or accessory was purchased by the motor vehicle dealer from another authorized same line or make motor vehicle dealer in the ordinary course of business, the manufacturer shall purchase the part or accessory for the price in the current parts catalog. The motor vehicle dealer shall maintain accurate records regarding the actual purchase price of parts that the manufacturer or distributor is required to purchase under this paragraph.

(c) In addition to the costs referenced in paragraphs (a) and (b) of this subsection, the manufacturer shall pay the motor vehicle dealer an additional five percent (5%) charge based on the total compensation due under this section for handling, packing, storing and loading of any parts subject to repurchase pursuant to this section and the manufacturer shall pay for shipping the vehicles subject to repurchase from the location of the motor vehicle dealer to the location directed by the manufacturer.

(d) The manufacturer shall pay the motor vehicle dealer the amounts specified in this subsection within ninety (90) days after the tender of the property, subject to the motor vehicle dealer providing evidence of good and clear title upon return of property to the manufacturer. The manufacturer shall remove the property from the motor vehicle dealer's premises within one hundred eighty (180) days after the tender of the property.

(2) In the event a manufacturer or distributor cancels, refuses to continue, or refuses to renew any franchise or discontinues any line or make or parts essential to such line or make, in addition to the compensation provided in subsection (1) of this section, the manufacturer or distributor shall pay reasonable compensation to the motor vehicle dealer as follows:

(a) In the event a motor vehicle dealer leases the dealership facilities, then the manufacturer shall be liable for twelve (12) months payment of the gross rent or the remainder of the term of the lease, whichever is less. If the dealership facilities are not leased, then the manufacturer shall be liable for the equivalent of twelve (12) months payment of gross rent based upon the fair market value of the dealership facilities. The gross rent shall be paid only to the extent that the dealership premises are recognized in the franchise and only if they are used solely for performance in accordance with

the franchise and not substantially in excess of those facilities recommended by the manufacturer or distributor. If the facility is used for the operations of more than one (1) franchise, the gross rent compensation shall only include the prorated value of the square footage used exclusively for the terminated franchise or line or make at the time of termination. This paragraph shall not apply to a termination, cancellation or nonrenewal due to a sale of the assets or stock of the motor vehicle dealership. In addition to the gross rent, the manufacturer is required to pay the dealer the net cost of any upgrades or other alterations made by the motor vehicle dealer to the dealership facilities which were required in writing by the manufacturer and made by the motor vehicle dealer within two (2) years prior to the effective date of termination. Nothing in this paragraph shall be construed to relieve a motor vehicle dealer of its obligation to mitigate damages upon termination, cancellation, or nonrenewal. As used in this paragraph "Gross rent" is the monthly rent plus the monthly cost of insurance and taxes.

(b) The manufacturer shall pay the motor vehicle dealer for the value of twelve (12) months of any outstanding amounts on any leases or the remaining amount of the lease, whichever is less, of computer hardware or software that is exclusively used to manage and report data of the terminated line or make to the manufacturer or distributor for financial reporting requirements.

(c) The manufacturer shall pay the motor vehicle dealer for the value of twelve (12) months or the remaining amount of the lease, whichever is less of any outstanding amounts on any manufacturer or distributor required equipment leases, service contracts, and sign leases.

(d) The fair market value of each undamaged sign owned by the motor vehicle dealer which bears a trademark or trade name used or claimed by the manufacturer if the sign was purchased from, or purchased at a requirement of, the manufacturer, plus the costs of installing the sign and the costs of purchasing and installing any pole upon which the sign is located. During the first three (3) years after its purchase, the fair market value of each sign shall be the motor vehicle dealer's net costs of purchasing the sign. Thereafter, the fair market value of the sign shall be the greater of its actual market value or its depreciated value on the books of the motor vehicle dealer.

(e) The fair market value of all tools, data processing programs and equipment and automotive service equipment owned by the motor vehicle dealer which are exclusively used for the line or make being terminated and which were required in writing and designated as equipment, tools, data processing programs and equipment, and automotive service equipment and purchased from, or purchased as a requirement of, the manufacturer if the equipment, tools, programs and equipment are in usable and good condition, except for reasonable wear and tear. During the first three (3) years after their purchase, the fair market value of each item of equipment, tools, programs, and equipment shall be the motor vehicle dealer's net cost associated with purchasing the items. Thereafter, the fair market value of



each item shall be the greater of its actual market value or its depreciated value on the books of the motor vehicle dealer.

(f) In addition to the other payments set forth in this section, if a termination, cancellation, or nonrenewal is premised upon the manufacturer discontinuing the sale in this state of a line or make that was the subject of the franchise, then the manufacturer shall also be liable to the motor vehicle dealer for an amount at least equivalent to the fair market value of the motor vehicle dealer's franchise for the discontinued line or make as of:

(i) The date immediately preceding the date the manufacturer announces the action which results in termination, cancellation, or nonrenewal; or

(ii) The day twelve (12) months prior to the date on which the notice of termination, cancellation, or nonrenewal is issued, whichever amount is higher.

At the motor vehicle dealer's option, the manufacturer may avoid paying fair market value of the motor vehicle franchise to the motor vehicle dealer under this paragraph if the manufacturer, or another motor vehicle manufacturer pursuant to an agreement with the manufacturer, offers the motor vehicle dealer a replacement motor vehicle franchise with terms substantially similar to that offered to other same line or make motor vehicle dealers.

(g) The manufacturer shall pay the motor vehicle dealer the amounts specified in this subsection along with any other amounts that may be due to the motor vehicle dealer under the franchise agreement within ninety (90) days after the tender of the property, subject to the motor vehicle dealer providing evidence of good and clear title upon return of the property to the manufacturer. The manufacturer shall remove the property within one hundred eighty (180) days after the tender of the property from the motor vehicle dealer's premises. Unless previous arrangements have been made and agreed upon, the motor vehicle dealer is under no obligation to provide insurance for the property left after one hundred eighty (180) days.

(3) This section shall not apply to any sale, exchange, inheritance, gift or other transfer of ownership, stock, assets, management, or any other rights of the motor vehicle dealer, or to any termination for good cause, including, but not limited to, a conviction for a felony involving moral turpitude, for failure to conduct business for seven (7) consecutive business days or eight (8) business days out of any fifteen-day business period, for insolvency of the motor vehicle dealer or for loss of license to sell motor vehicles, or where there is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of a material significance to the franchise relationship provided that the dealer has been notified in writing of the failure.

(4) This section shall not apply to motor homes.

**SOURCES:** Laws, 2014, ch. 349, § 1, eff from and after July 1, 2014.



## DEALER CONTRACTS

SEC.

63-17-131. Filing and approval of dealer contracts.

63-17-141. Repealed.

**§ 63-17-131. Filing and approval of dealer contracts.****[Until October 1, 2014, this section shall read as follows:]**

Any person, partnership, association of persons or corporation engaged in the manufacture and/or distribution of motor vehicles, whether resident or nonresident of the State of Mississippi, transacting the business of manufacturing, distribution, or sale of motor vehicles or the parts or accessories thereof in the State of Mississippi, shall file in the office of the secretary of state the form of a contract which is to be entered into between such manufacturer with its agent, dealer or representative in this state. Upon the approval by the attorney general of such contract, the contract shall become binding on all parties thereto. The failure to file such contract with the secretary of state as provided herein and to secure the approval thereof of the attorney general of the state, shall render the contract unenforceable.

**[From and after October 1, 2014, this section shall read as follows:]**

Any person, partnership, association of persons or corporation engaged in the manufacture and/or distribution of motor vehicles, whether resident or nonresident of the State of Mississippi, transacting the business of manufacturing, distribution, or sale of motor vehicles or the parts or accessories thereof in the State of Mississippi, shall file in the Office of the Secretary of State the form of a contract which is to be entered into between such manufacturer with its agent, dealer or representative in this state. Upon the approval by the Attorney General of the contract, the contract shall become binding on all parties thereto. The failure to file the contract with the Secretary of State as provided herein and to secure the approval thereof of the Attorney General of the state, shall render the contract unenforceable. This section shall not apply to dealers or manufacturers of motor homes governed by the provisions of Sections 63-17-201 through 63-17-221.

**SOURCES:** Codes, 1942, § 8072; Laws, 1935, ch. 35; Laws, 2014, ch. 532, § 14, eff from and after Oct. 1, 2014.

**Editor's Note** — Laws of 2014, ch. 532, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

**Amendment Notes** — The 2014 amendment added the last sentence and substituted "the" for "such" in the second and third sentences.

**§ 63-17-141. Repealed.**

Repealed by Laws, 2014, ch. 349, § 5, effective July 1, 2014.

§ 63-17-141. [Laws, 1994, ch. 399, § 1; Laws, 2010, ch. 395, § 1, eff from and after July 1, 2010.]

**Editor's Note** — Former § 63-17-141 provided the duties of dealers and manufacturers of motor vehicles upon termination or renewal of franchise agreements.

## RECREATIONAL VEHICLE FRANCHISE LAW

### SEC.

- 63-17-201. Definitions [Effective October 1, 2014].
- 63-17-203. Written agreements; designated territories [Effective October 1, 2014].
- 63-17-205. Termination, cancellation, nonrenewal and alteration of a dealership [Effective October 1, 2014].
- 63-17-207. Repurchase of inventory [Effective October 1, 2014].
- 63-17-209. Transfer of dealership; family succession [Effective October 1, 2014].
- 63-17-211. Warranty obligations [Effective October 1, 2014].
- 63-17-213. Indemnification [Effective October 1, 2014].
- 63-17-215. Inspection and rejection by dealer [Effective October 1, 2014].
- 63-17-217. Coercion of dealer prohibited [Effective October 1, 2014].
- 63-17-219. Mediation [Effective October 1, 2014].
- 63-17-221. Selling at shows [Effective October 1, 2014].

### § 63-17-201. Definitions [Effective October 1, 2014].

As used in Sections 63-17-201 through 63-17-221, the following terms shall have the meanings ascribed unless the context clearly indicates otherwise:

(a) "Area of sales responsibility" means the geographical area, agreed to by the dealer and the manufacturer in the manufacturer-dealer agreement, within which area the dealer has the exclusive right to display or sell the manufacturer's new recreational vehicles of a particular line-make to the retail public.

(b) "Dealer" means any firm, corporation, partnership, individual proprietorship or other type of business enterprise whose principle business is the selling at retail of one or more of the six (6) types of recreational vehicles commonly known as travel trailers, fifth wheels, motor homes, park-model RVs, truck campers and camping trailers. The entity must maintain a permanent business establishment including service/repair facilities, open essentially twelve (12) months a year, must offer mechanical service for the vehicles it sells and must be duly licensed by the Mississippi Motor Vehicle Commission.

(c) "Distributor" means any person, firm, corporation or business entity that purchases new recreational vehicles for resale to dealers.

(d) "Factory campaign" means an effort on the part of a warrantor to contact recreational vehicle owners or dealers in order to address a part or equipment issue.

(e) "Family member" means a spouse, child, grandchild, parent, sibling, niece or nephew, or the spouse thereof.

(f) "Line-make" means a specific series of recreational vehicle products that:

- (i) Are identified by a common series trade name or trademark;
- (ii) Are targeted to a particular market segment, as determined by their decor, features, equipment, size, weight and price range;
- (iii) Have lengths and interior floor plans that distinguish the recreational vehicles from other recreational vehicles with substantially the same decor, equipment, features, price and weight;
- (iv) Belong to a single, distinct classification of recreational vehicle product type having a substantial degree of commonality in the construction of the chassis, frame and body; and
- (v) The manufacturer-dealer agreement authorizes a dealer to sell.
- (g) "Manufacturer" means any person, firm, corporation or business entity that engages in the manufacturing of recreational vehicles.
- (h) "Manufacturer-dealer agreement" means a written agreement or contract entered into between a manufacturer and a dealer that fixes the rights and responsibilities of the parties and pursuant to which the dealer sells new recreational vehicles.
- (i) "Proprietary part" means any part manufactured by or for and sold exclusively by the manufacturer.
- (j) "Nonsanctioned recreational show event" means any event where one or more recreational vehicle dealers attend and the event is conducted by a licensed Mississippi Recreational Vehicle Dealer.
- (k)(i) "Recreational vehicle" means a vehicle that:
  - 1. Is primarily designed as a vehicle that also provides temporary living quarters for noncommercial, recreational or camping use;
  - 2. Is built to the National Fire Protection Association 1192 standard for recreational vehicles;
  - 3. Has its own motive power or is mounted on or towed by another vehicle;
  - 4. Is regulated by the National Highway Traffic Safety Administration as a vehicle or vehicle equipment;
  - 5. Does not require a special highway use permit for operation on the highways; and
  - 6. An individual can easily transport and set-up on a daily basis.
- (ii) "Recreational vehicles" includes, but is not limited to, the following:
  - 1. Motor home: A motorized, vehicular unit designed to provide temporary living quarters for recreational, camping or travel use.
  - 2. Travel trailer: A vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use of such size and weight as to not require a special highway movement permit when towed by a motorized vehicle.
  - 3. Fifth-wheel trailer: A vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use of such size and weight as to not require a special highway movement permit and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.



4. Camping trailer: A vehicular unit that is mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping or travel use.

5. Truck camper: A portable unit that is constructed to provide temporary living quarters for recreational, travel or camping use, consists of a roof, floor and sides, and is designed to be loaded onto and unloaded from the back of a pickup truck.

6. "Park-model RV" means a unit that is:

a. Designed and marketed primarily as temporary living quarters for recreational, camping, travel, or seasonal use, and not for use as a permanent dwelling;

b. Between three hundred twenty (320) and four hundred (400) square feet based on the exterior dimensions of the structure measured at the largest horizontal projections, when erected on site, including all space that has a ceiling height of more than five (5) feet and any expandable room, slide-out, tip-out, or tag-along unit;

c. Built on a single chassis and not designed to accept additional structures, add-ons or other additions that will increase the area as determined in subitem b in excess of four hundred (400) square feet;

d. Built pursuant to a third-party inspection and certification process; and

e. Built to the ANSI A119.5, Park Model RV Standard.

(l) "Sanctioned recreational show event" means any event where one or more recreational vehicle dealers attend and the event is conducted by someone other than a licensed Mississippi Recreational Vehicle Dealer.

(m) "Supplier" means any person, firm, corporation or business entity that engages in the manufacturing of recreational vehicle parts, accessories or components.

(n) "Transient customer" means a customer owns a recreational vehicle, is temporarily traveling through a dealer's area of sales responsibility, engages the dealer to perform service work on the vehicle and whose recreational vehicle requires repairs that relate to the safe operations of that recreational vehicle.

(o) "Warrantor" means any person, firm, corporation or business entity, including any manufacturer or supplier, that provides a written warranty to the consumer in connection with a new recreational vehicle or parts, accessories or components thereof. The term also includes a dealer or other person not controlled by a manufacturer who sells service contracts, mechanical or other insurance, or extended warranties for separate consideration.

**SOURCES:** Laws, 2014, ch. 532, § 1, eff from and after Oct. 1, 2014.

**Editor's Note** — Laws of 2014, ch. 532, § 16, provides:

“SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date.”

**§ 63-17-203. Written agreements; designated territories [Effective October 1, 2014].**

(1) A manufacturer or distributor may not sell a recreational vehicle in this state to or through a dealer without having first entered into a manufacturer-dealer agreement with a dealer that has been signed by both parties.

(2) The manufacturer shall designate the area of sales responsibility exclusively assigned to a dealer in the manufacturer-dealer agreement and may not change the contract area or contract with another dealer for sale of the same line-make in the designated area during the duration of the agreement.

(3) The area of sales responsibility may not be revised or changed without the consent of both parties for one (1) year after the execution of the manufacturer-dealer agreement. Upon renewal both parties must agree on stocking requirements.

(4) A recreational vehicle dealer may not sell a new recreational vehicle in this state without having first entered into a manufacturer-dealer agreement with a manufacturer or distributor that has been signed by both parties. The manufacturer-dealer agreement must be filed with the Mississippi Motor Vehicle Commission.

(5) For any new recreational vehicle dealer licensee without an established dealership in this state, there shall be a thirty-day waiting period after the date the application has been approved by the Mississippi Motor Vehicle Commission before the new licensee may commence retail operations.

(6) A recreational vehicle manufacturer may not offer to sell or sell any new recreational vehicle to any recreational vehicle dealer at a lower actual price than the actual price charged to any other recreational vehicle dealer for the same line-make vehicle similarly equipped. This subsection shall not be construed to prevent the offering of volume discounts if such discounts are equally available to all franchised dealers in this state.

**SOURCES:** Laws, 2014, ch. 532, § 2, eff from and after Oct. 1, 2014.

**Editor's Note** — Laws of 2014, ch. 532, § 16, provides:

“SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date.”

**§ 63-17-205. Termination, cancellation, nonrenewal and alteration of a dealership [Effective October 1, 2014].**

(1) **Manufacturer or distributor termination.** — (a) A manufacturer or distributor, directly or through any authorized officer, agent or employee, may not terminate, cancel or fail to renew a manufacturer-dealer agreement without good cause. If the manufacturer or distributor terminates, cancels or

fails to renew the manufacturer-dealer agreement without good cause, the manufacturer or distributor must comply with Section 63-17-207. If the manufacturer or distributor terminates, cancels or fails to renew the manufacturer-dealer agreement for good cause, Section 63-17-207 does not apply.

(b) The manufacturer or distributor has the burden of showing good cause for terminating, canceling or failing to renew a manufacturer-dealer agreement with a dealer. For purposes of determining whether there is good cause for the proposed action, any of the following factors may be considered:

(i) The extent of the affected dealer's penetration in the area of sales responsibility.

(ii) The nature and extent of the dealer's investment in its business.

(iii) The adequacy of the dealer's service facilities, equipment, parts, supplies and personnel.

(iv) The effect of the proposed action on the community.

(v) The extent and quality of the dealer's service under recreational vehicle warranties.

(vi) The failure to follow agreed-upon procedures or standards related to the overall operation of the dealership.

(vii) The dealer's performance under the terms of its manufacturer-dealer agreement.

(c) Except as otherwise provided in this section, a manufacturer or distributor shall provide a dealer with at least ninety (90) days' prior written notice of termination, cancellation or nonrenewal of the manufacturer-dealer agreement if the dealer is being terminated for good cause.

(i) The notice must state all reasons for the proposed termination, cancellation or nonrenewal and must further state that if, within thirty (30) days following receipt of the notice the dealer provides to the manufacturer or distributor a written notice of intent to cure all claimed deficiencies, the dealer will then have ninety (90) days following receipt of the notice to rectify the deficiencies. If the deficiencies are rectified within ninety (90) days, the manufacturer's or distributor's notice is voided. If the dealer fails to provide the notice of intent to cure the deficiencies in the prescribed time period, the termination, cancellation or nonrenewal takes effect thirty (30) days after the dealer's receipt of the notice unless the dealer has new and untitled inventory on hand that may be disposed of pursuant to Section 63-17-207.

(ii) The notice period may be reduced to thirty (30) days if the manufacturer's or distributor's grounds for termination, cancellation or nonrenewal are due to any of the following good cause factors:

1. A dealer or one (1) of its owners being convicted of, or entering a plea of *nolo contendere* to, a felony;

2. The abandonment or closing of the business operations of the dealer for ten (10) consecutive business days without contacting the manufacturer prior to the closing unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the dealer has no control;



3. A significant misrepresentation by the dealer materially affecting the business relationship;

4. A suspension or revocation of the dealer's license, or refusal to renew the dealer's license;

5. A material violation of Sections 63-17-201 through 63-17-221 which is not cured within thirty (30) days after the written notice by the manufacturer; or

6. A declaration by the dealer of bankruptcy, insolvency or the occurrence of an assignment for the benefit of creditors or bankruptcy.

(d) The notice provisions of this subsection (1) do not apply if the reason for termination, cancellation or nonrenewal is the dealer's insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.

(2) **Dealer termination.** — (a) A dealer may terminate or cancel its manufacturer-dealer agreement with a manufacturer or distributor with or without good cause by giving thirty (30) days' written notice. If the termination or cancellation is for good cause, the notice must state all reasons for the proposed termination or cancellation and must further state that if, within thirty (30) days following receipt of the notice, the manufacturer or distributor provides to the dealer a written notice of intent to cure all claimed deficiencies, the manufacturer or distributor will then have ninety (90) days following receipt of the original notice to rectify the deficiencies. If the deficiencies are rectified within ninety (90) days, the dealer's notice is voided. If the manufacturer or distributor fails to provide the notice of intent to cure the deficiencies in the time period prescribed in the original notice of termination or cancellation, the pending termination or cancellation shall take effect thirty (30) days after the manufacturer's or distributor's receipt of the original notice.

(b) If the dealer terminates, cancels or fails to renew the manufacturer-dealer agreement without good cause, the terms of Section 63-17-207 do not apply. If the dealer terminates, cancels or fails to renew the manufacturer-dealer agreement with good cause, Section 63-17-207 applies. The dealer has the burden of showing good cause. Any of the following items shall be deemed "good cause" for the proposed termination, cancellation or nonrenewal action by a dealer:

(i) A manufacturer being convicted of, or entering a plea of nolo contendere to, a felony.

(ii) The business operations of the manufacturer have been abandoned or closed for ten (10) consecutive business days without contacting the dealer prior to the closing

(iii) unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the manufacturer has no control.

(iii) A significant misrepresentation by the manufacturer materially affecting the business relationship.

(iv) A material violation of Sections 63-17-201 through 63-17-221 that is not cured within thirty (30) days after written notice by the dealer.

(v) A declaration by the manufacturer of bankruptcy, insolvency, or the occurrence of an assignment for the benefit of creditors or bankruptcy.

**SOURCES:** Laws, 2014, ch. 532, § 3, eff from and after Oct. 1, 2014.

**Editor's Note** — Laws of 2014, ch. 532, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

**§ 63-17-207. Repurchase of inventory [Effective October 1, 2014].**

(1) If the manufacturer-dealer agreement is terminated, canceled, or not renewed by the manufacturer or distributor without good cause as defined in Section 63-17-205(1) of this act, or if the dealer terminates or cancels the manufacturer-dealer agreement for good cause as defined in Section 63-17-205(2) of this act, and the manufacturer fails to cure the claimed deficiencies as provided in Section 63-17-205(2) of this act, the manufacturer shall, at the election of the dealer and within forty-five (45) days after termination, cancellation or nonrenewal, repurchase:

(a) All new, untitled recreational vehicles that were acquired from the manufacturer or distributor within eighteen (18) months before the effective date of the notice of termination, cancellation, or nonrenewal that have not been used, except for demonstration purposes, and that have not been altered or damaged, at one hundred percent (100%) of the net invoice cost, including transportation, less applicable rebates and discounts to the dealer. If any of the vehicles repurchased pursuant to this paragraph (a) are damaged, but do not trigger a consumer disclosure requirement, the amount due the dealer shall be reduced by the cost to repair the vehicle. Damage before delivery to the dealer that is disclosed at the time of delivery will not disqualify repurchase under this provision.

(b) All undamaged accessories and proprietary parts sold to the dealer for resale within the twelve (12) months before termination, cancellation or nonrenewal, if accompanied by the original invoice, at one hundred five percent (105%) of the original net price paid to the manufacturer or distributor to compensate the dealer for handling, packing, and shipping the parts; and

(c) Any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery at one hundred percent (100%) of the dealer's net cost plus freight, destination, delivery and distribution charges and sales taxes, if any, if the returned items were purchased by the dealer within five (5) years before termination, cancellation or nonrenewal at the manufacturer's or distributor's request, if the dealer can establish that the items no longer can be used in the normal course of the dealer's ongoing business. The manufacturer or distributor shall pay the dealer within thirty (30) days after receipt of the returned items.

(2) The warrantor may not prohibit a dealer from selling or performing warranty service on the remaining in-stock inventory of a particular line-make

after a dealer agreement has been terminated or not renewed in accordance with the provisions of Section 63-17-205. If recreational vehicles of a line-make are not returned or required to be returned to the manufacturer, the dealer may continue to sell and perform warranty service on all line-makes that were subject to the dealer agreement and are currently in stock until those line-makes are no longer in the dealer's inventory and until all warranties are expired on those recreational vehicles retailed by that dealer.

**SOURCES:** Laws, 2014, ch. 532, § 4, eff from and after Oct. 1, 2014.

**Editor's Note** — Laws of 2014, ch. 532, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

**§ 63-17-209. Transfer of dealership; family succession [Effective October 1, 2014].**

(1) If a dealer desires to make a change in ownership by the sale of the business assets, stock transfer, or otherwise, the dealer shall give the manufacturer or distributor written notice at least fifteen (15) business days before the closing, including all supporting documentation as may be reasonably required by the manufacturer or distributor to determine if an objection to the sale may be made. In the absence of a breach by the selling dealer of its dealer agreement or this chapter, the manufacturer or distributor shall not object to the proposed change in ownership unless the prospective transferee:

(a) Has previously been terminated by the manufacturer for breach of its dealer agreement;

(b) Has been convicted of a felony or any crime of fraud, deceit, or moral turpitude;

(c) Lacks any license required by law;

(d) Does not have an active line of credit sufficient to purchase a manufacturer's product; or

(e) Has undergone in the last ten (10) years bankruptcy, insolvency, a general assignment for the benefit of creditors, or the appointment of a receiver, trustee or conservator to take possession of the transferee's business or property. This paragraph (e) can be waived if the prospective transferee meets all of the requirements of this section and if the prospective transferee fully qualifies under the manufacturer's or lender's financial criteria.

(2) If the manufacturer or distributor objects to a proposed change of ownership, the manufacturer or distributor shall give written notice of its reasons to the dealer within ten (10) business days after receipt of the dealer's notification and complete documentation. The manufacturer or distributor has the burden of proof with regard to its objection. If the manufacturer or distributor does not give timely notice of its objection, the change or sale shall be deemed approved.



(3) It is unlawful for a manufacturer or distributor to fail to provide a dealer an opportunity to designate, in writing, a family member as a successor to the dealership in the event of the death, incapacity or retirement of the dealer. It is unlawful to prevent or refuse to honor the succession to a dealership by a family member of the deceased, incapacitated or retired dealer unless the manufacturer or distributor has provided to the dealer written notice of its objections within ten (10) business days after receipt of the dealer's modification of the dealer's succession plan. In the absence of a breach of the dealer agreement, the manufacturer may object to the succession for the following reasons only:

(a) Conviction of the successor of a felony or any crime of fraud, deceit or moral turpitude;

(b) Bankruptcy or insolvency of the successor during the past ten (10) years. This paragraph (b) can be waived if the prospective successor meets all the requirements of this section and if the prospective successor fully qualifies under the manufacturer's or lender's financial criteria;

(c) Prior termination by the manufacturer of the successor for breach of a dealer agreement;

(d) The lack of an active line of credit for the successor sufficient to purchase the manufacturer's product; or

(e) The lack of any license for the successor required by law.

(4) The manufacturer or distributor has the burden of proof regarding its objection. However, a family member may not succeed to a dealership if the succession involves, without the manufacturer's or distributor's consent, a relocation of the business or an alteration of the terms and conditions of the manufacturer-dealer agreement.

**SOURCES:** Laws, 2014, ch. 532, § 5, eff from and after Oct. 1, 2014.

**Editor's Note** — Laws of 2014, ch. 532, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

## **§ 63-17-211. Warranty obligations [Effective October 1, 2014].**

(1) Each warrantor shall:

(a) Specify in writing to each of its dealer obligations, if any, for preparation, delivery and warranty service on its products;

(b) Compensate the dealer for warranty service required of the dealer by the warrantor; and

(c) Provide the dealer the schedule of compensation to be paid and the time allowances for the performance of any work and service. The schedule of compensation must include reasonable compensation for diagnostic work as well as warranty labor.

(2) Time allowances for the diagnosis and performance of warranty labor must be reasonable for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factors

to be given consideration shall be the actual wage rates being paid by the dealer, and the actual retail labor rate being charged by the dealers in the community in which the dealer is doing business. The compensation of a dealer for warranty labor may not be less than the lowest retail labor rates actually charged by the dealer for like nonwarranty labor as long as such rates are reasonable.

(3) The warrantor shall reimburse the dealer for warranty parts at actual wholesale cost plus a minimum thirty percent (30%) handling charge and the cost, if any, of freight to return warranty parts to the warrantor.

(4) Warranty audits of dealer records may be conducted by the warrantor on a reasonable basis, not to exceed a twelve-month look-back period from the current calendar date and dealer claims for warranty compensation may not be denied except for cause, such as performance of nonwarranty repairs, material noncompliance with the warrantor's published policies and procedures, lack of material documentation, fraud or misrepresentation.

(5) The dealer shall submit warranty claims within thirty (30) days after completing work.

(6) The dealer shall immediately notify the warrantor in writing if the dealer is unable to perform any warranty repairs within ten (10) days of receipt of written complaints from a consumer.

(7) The warrantor shall disapprove warranty claims in writing within thirty (30) days after the date of submission by the dealer in the manner and form prescribed by the warrantor. All claims shall be paid as authorized. Claims submitted according to warrantor's guidelines not specifically disapproved in writing within thirty (30) days shall be construed to be approved and must be paid within thirty (30) days of submission. Claims related to any type of service contract, mechanical or other insurance, or extended warranty sold for separate consideration by a dealer or other person not controlled by a manufacturer must be paid to the dealer as authorized immediately upon submission of completion by the dealer.

(8) It is a violation of Sections 63-17-201 through 63-17-221 for any warrantor to:

(a) Fail to perform any of its warranty obligations with respect to its warranted products;

(b) Fail to include, in written notices of factory campaigns to recreational vehicle owners and dealers, the expected date by which necessary parts and equipment, including tires and chassis or chassis parts, will be available to dealers to perform the campaign work. The warrantor may ship parts to the dealer to effect the campaign work, and, if such parts are in excess of the dealer's requirements, the dealer may return unused parts to the warrantor for credit after completion of the campaign;

(c) Fail to compensate any of its dealers for authorized repairs effected by the dealer of merchandise damaged in manufacture or transit to the dealer, if the carrier is designated by the warrantor, factory branch, distributor or distributor branch;

(d) Fail to compensate any of its dealers in accordance with the schedule of compensation provided to the dealer pursuant to this section if performed in a timely and competent manner;

(e) Intentionally misrepresent in any way to purchasers of recreational vehicles that warranties with respect to the manufacture, performance or design of the vehicle are made by the dealer as warrantor or co-warrantor; or

(f) Require the dealer to make warranties to customers in any manner related to the manufacture of the recreational vehicle.

(9) It is a violation of Sections 63-17-201 through 63-17-221 for any dealer to:

(a) Fail to perform pre-delivery inspection functions, as specified by the warrantor, in a competent and timely manner;

(b) Fail to perform warranty service work authorized by the warrantor in a reasonably competent and timely manner on any transient customer's vehicle of the same line-make;

(c) Fail to accurately document the time spent completing each repair, the total number of repair attempts conducted on a single unit, and the number of repair attempts for the same repair conducted on a single vehicle;

(d) Fail to notify the warrantor within ten (10) days of a second repair attempt which impairs the use, value or safety of the vehicle;

(e) Fail to maintain written records, including a consumer's signature, regarding the amount of time a unit is stored for the consumer's convenience during a repair; or

(f) Make fraudulent warranty claims or misrepresent the terms of any warranty.

**SOURCES:** Laws, 2014, ch. 532, § 6, eff from and after Oct. 1, 2014.

**Editor's Note** — Laws of 2014, ch. 532, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

### **§ 63-17-213. Indemnification [Effective October 1, 2014].**

Notwithstanding the terms of any manufacturer-dealer agreement, it is a violation of Sections 63-17-201 through 63-17-221 for:

(a) A warrantor to fail to indemnify and hold harmless its dealer against any losses or damages to the extent the losses or damages are caused by the negligence or willful misconduct of the warrantor. The dealer shall provide to the warrantor a copy of any pending law suit or similar proceeding in which allegations are made that come within this subsection within ten (10) days after receiving the suit.

(b) A dealer to fail to indemnify and hold harmless its warrantor against any losses or damages to the extent the losses or damages are caused by the negligence or willful misconduct of the dealer. The warrantor shall provide to the dealer a copy of any pending law suit or similar proceeding in



which allegations are made that come within this subsection within ten (10) days after receiving the suit.

**SOURCES:** Laws, 2014, ch. 532, § 7, eff from and after Oct. 1, 2014.

**Editor's Note** — Laws of 2014, ch. 532, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

**§ 63-17-215. Inspection and rejection by dealer [Effective October 1, 2014].**

(1) Whenever a new recreational vehicle is damaged before transit to the dealer or is damaged in transit to the dealer when the carrier or means of transportation has been selected by the manufacturer or distributor, the dealer shall notify the manufacturer or distributor of the damage within the timeframe specified in the manufacturer-dealer agreement and:

(a) Request from the manufacturer or distributor authorization to replace the components, parts and accessories damaged or otherwise correct the damage; or

(b) Reject the vehicle within the timeframe set forth in subsection (4) of this section.

(2) If the manufacturer or distributor refuses or fails to authorize repair of such damage within ten (10) days after receipt of notification, or if the dealer rejects the recreational vehicle because of damage, ownership of the new recreational vehicle shall revert to the manufacturer or distributor.

(3) The dealer shall exercise due care in custody of the damaged recreational vehicle, but the dealer shall have no other obligations, financial or otherwise, with respect to that recreational vehicle.

(4) The timeframe for inspection and rejection by the dealer must be part of the manufacturer-dealer agreement and may not be less than two (2) business days after the physical delivery of the recreational vehicle.

(5) Any recreational vehicle that has, at the time of delivery to the dealer, an unreasonable amount of miles on its odometer, as determined by the dealer, may be subject to rejection by the dealer and reversion of the vehicle to the manufacturer or distributor. In no instance shall a dealer deem an amount less than the distance between the dealer and the manufacturer's factory or a distributor's point of distribution, plus one hundred (100) miles, as unreasonable.

**SOURCES:** Laws, 2014, ch. 532, § 8, eff from and after Oct. 1, 2014.

**Editor's Note** — Laws of 2014, ch. 532, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

**§ 63-17-217. Coercion of dealer prohibited [Effective October 1, 2014].**

(1) A manufacturer or distributor may not coerce or attempt to coerce a dealer to:

- (a) Purchase a product that the dealer did not order;
- (b) Enter into an agreement with the manufacturer or distributor; or
- (c) Enter into an agreement that requires the dealer to submit its disputes to binding arbitration or otherwise waive rights or responsibilities provided under Sections 63-17-201 through 63-17-221.

(2) As used in this section, the term “coerce” includes, but is not limited to, threatening to terminate, cancel or not renew a manufacturer-dealer agreement without good cause or threatening to withhold product lines the dealer is entitled to purchase pursuant to the manufacturer-dealer agreement or delay product delivery as an inducement to amending the manufacturer-dealer agreement.

**SOURCES:** Laws, 2014, ch. 532, § 9, eff from and after Oct. 1, 2014.

**Editor’s Note** — Laws of 2014, ch. 532, § 16, provides:

“SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date.”

**§ 63-17-219. Mediation [Effective October 1, 2014].**

(1) A dealer, manufacturer or warrantor injured by another party’s violation of Sections 63-17-201 through 63-17-221 may bring a civil action in circuit court to recover actual damages. The court shall award attorney’s fees and costs to the prevailing party in such an action. Venue for any civil action authorized by this section shall exclusively be in the county in which the dealer’s business is located. In an action involving more than one (1) dealer, venue may be in any county in which any dealer that is party to the action is located.

(2) Prior to bringing suit under this section, the party bringing suit for an alleged violation shall serve a written demand for mediation upon the offending party.

(a) The demand for mediation shall be served upon the other party via certified mail at the address stated within the manufacturer-dealer agreement between the parties.

(b) The demand for mediation shall contain a brief statement of the dispute and the relief sought by the party filing the demand.

(c) Within twenty (20) days after the date a demand for mediation is served, the parties shall mutually select an independent certified mediator and meet with that mediator for the purpose of attempting to resolve the dispute. The meeting place shall be in this state in a location selected by the mediator. The mediator may extend the date of the meeting for good cause shown either party or upon stipulation of both parties.

(d) The service of a demand for mediation under this section shall toll the time for the filing of any complaint, petition, protest or other action under Sections 63-17-201 through 63-17-221 until representatives of both parties have met with a mutually selected mediator for the purpose of attempting to resolve the dispute. If a complaint, petition, protest or other action is filed before that meeting, the court shall enter an order suspending the proceeding or action until the mediation meeting has occurred and may, upon written stipulation of all parties to the proceeding or action that they wish to continue to mediate under this section, enter an order suspending the proceeding or action for as long a period as the court considers appropriate.

(e) The parties to the mediation shall bear their own costs for attorney's fees and divide equally the cost of the mediator.

(3) In addition to the remedies provided in this section and notwithstanding the existence of any additional remedy at law, a manufacturer, or warrantor, or a dealer is authorized to make application to a circuit court for the grant, upon a hearing and for cause shown, of a temporary or permanent injunction, or both, restraining any person from acting as a dealer without being properly licensed, from violating or continuing to violate any of the provisions of Sections 63-17-201 through 63-17-221, or from failing or refusing to comply with the requirements of Sections 63-17-201 through 63-17-221. Injunction under this provision shall be issued without bond. A single act in violation of the provisions of Sections 63-17-201 through 63-17-221 shall be sufficient to authorize the issuance of an injunction.

**SOURCES:** Laws, 2014, ch. 532, § 10, eff from and after Oct. 1, 2014.

**Editor's Note** — Laws of 2014, ch. 532, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

### **§ 63-17-221. Selling at shows [Effective October 1, 2014].**

(1) A recreational vehicle dealer may not sell or display for sale a new recreational vehicle in this state unless the dealer is licensed by the Mississippi Motor Vehicle Commission to sell recreational vehicles in the State of Mississippi. The recreational vehicle dealer is also required to have a dealer agreement with the manufacturer of the recreational vehicle that meets the requirements of Sections 63-17-201 through 63-17-221 and is signed by both parties.

(2) Out-of-state recreational vehicle dealers may participate in sanctioned or nonsanctioned recreational vehicle shows under the following circumstances:

(a) An out-of-state recreational vehicle dealer must have the unanimous approval, in writing, of all recreational vehicle dealers that have the area of responsibility where the sanctioned or nonsanctioned show event is held;



(b) Out-of-state recreational vehicle dealers must obtain permission, in writing, from the manufacturer for all models to be displayed where the sanctioned or nonsanctioned show event is being held; and

(c) Out-of-state recreational vehicle dealers must obtain a permit from the Mississippi Motor Vehicle Commission to participate in a sanctioned recreational vehicle show.

(3) A recreational vehicle dealer may not conduct sales activity or display for sale recreational vehicles outside of the dealer's designated area of sales responsibility.

(4) A recreational vehicle dealer may sell off-premises within the area of sales responsibility of the dealer under the following circumstances:

(a) At sanctioned recreational vehicle shows where the sales event is held off premises. A sanctioned recreational vehicle show may be held only under the following conditions:

(i) The sponsoring entity of the sales event shall obtain a permit from the Mississippi Motor Vehicle Commission, which shall be for a period not to exceed ten (10) consecutive days;

(ii) New recreational vehicle dealers whose manufacturer-approved area of responsibility includes the event location shall be eligible to participate in the sanctioned recreational vehicle show; and

(iii) The sanctioned recreational vehicle show shall be conducted within municipal, county or state-owned or controlled facilities or within the grounds of any county, district or state fair; and

(b) At nonsanctioned recreational vehicle shows where one or more recreational vehicle dealers may sell recreational vehicles off premises under the following conditions:

(i) The location of the nonsanctioned recreational vehicle show shall be within the manufacturer-approved area of responsibility;

(ii) The nonsanctioned recreational vehicle show shall occur not more than five (5) consecutive days per event, excluding county, district or state fairs;

(iii) Each recreational vehicle dealer may participate in not more than eight (8) nonsanctioned recreational vehicle shows per calendar year; and

(iv) Nonsanctioned recreational vehicle shows shall be held on privately owned property not closer than two and one-half (2.5) miles to any other nonparticipating recreational vehicle dealer; provided, however, a nonsanctioned recreational vehicle show may be held on county or municipally owned property with no mileage barrier restriction.

(5) A recreational vehicle dealer may display a recreational vehicle within the designated area of responsibility of the recreational vehicle dealer for promotional purposes. At an off-premises display event, no sales activities shall be conducted including, but not limited to, negotiations, financing and accepting credit applications. Sales or finance personnel shall not be permitted to participate at an off-premises display event.

SOURCES: Laws, 2014, ch. 532, § 11, eff from and after Oct. 1, 2014.

**Editor’s Note** — Laws of 2014, ch. 532, § 16, provides:  
“SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date.”

CHAPTER 21

Motor Vehicle Titles

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JUDICIAL DECISIONS

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Creditor, a vehicle dealer, exercised control over debtor’s vehicle in violation of the automatic stay by refusing to furnish him with an application for a new certificate of title as required by Mississippi Motor Vehicle and Manufactured Housing Title Law, even though debtor’s counsel made him aware of the bankruptcy filing and

automatic stay. Creditor’s passive act of holding on to the existing certificate of title prevented debtor from lawfully driving the vehicle, which had the same effect as if creditor had repossessed the vehicle pre-petition and refused to return it post-petition. *Parker v. Smith (In re Parker)*, — Bankr. —, 2014 Bankr. LEXIS 58 (Bankr. S.D. Miss. Jan. 6, 2014).

§ 63-21-9. Requirement of certificate of title.

JUDICIAL DECISIONS

1. **In general.**  
Creditor, a vehicle dealer, exercised control over debtor’s vehicle in violation of the automatic stay by refusing to furnish him with an application for a new certificate of title as required by Mississippi Motor Vehicle and Manufactured Housing Title Law, even though debtor’s counsel made him aware of the bankruptcy filing and

automatic stay. Creditor’s passive act of holding on to the existing certificate of title prevented debtor from lawfully driving the vehicle, which had the same effect as if creditor had repossessed the vehicle pre-petition and refused to return it post-petition. *Parker v. Smith (In re Parker)*, — Bankr. —, 2014 Bankr. LEXIS 58 (Bankr. S.D. Miss. Jan. 6, 2014).

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**JUDICIAL DECISIONS**

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Creditor, a vehicle dealer, exercised control over debtor's vehicle in violation of the automatic stay by refusing to furnish him with an application for a new certificate of title as required by Mississippi Motor Vehicle and Manufactured Housing Title Law, even though debtor's counsel made him aware of the bankruptcy filing and

automatic stay. Creditor's passive act of holding on to the existing certificate of title prevented debtor from lawfully driving the vehicle, which had the same effect as if creditor had repossessed the vehicle pre-petition and refused to return it post-petition. *Parker v. Smith (In re Parker)*, — Bankr. —, 2014 Bankr. LEXIS 58 (Bankr. S.D. Miss. Jan. 6, 2014).

**ARTICLE 2.**

**PROCEDURES FOR FORFEITURE OF VEHICLES SEIZED IN MOTOR VEHICLE SCRAPPING OR DISMANTLING VIOLATIONS.**

SEC.

63-21-103. Vehicles subject to seizure; notice of intent to forfeit seized vehicle; petition to contest forfeiture.

**§ 63-21-103. Vehicles subject to seizure; notice of intent to forfeit seized vehicle; petition to contest forfeiture.**

(1) When any vehicle, trailer or similar conveyance is used in the commission of a violation of Section 63-21-39, the vehicle, trailer or similar conveyance so used is subject to seizure by the applicable law enforcement agency and the vehicle, trailer or similar conveyance may be forfeited by the administrative forfeiture procedures provided for in Sections 63-21-101 through 63-21-107.

(2) The attorney for or any representative of the seizing law enforcement agency shall provide notice of intention to forfeit the seized vehicle, trailer or similar conveyance administratively, either by certified mail, return receipt requested, or by personal delivery, to all persons who are required to be notified pursuant to this section.

(3) In the event that notice of intention to forfeit the seized vehicle, trailer or similar conveyance administratively cannot be given as provided in subsection (2) of this section because of refusal, failure to claim, insufficient address or any other reason, the attorney for or representative of the seizing law enforcement agency shall provide notice by publication in a newspaper of general circulation in the county in which the seizure occurred for once a week for three (3) consecutive weeks.

(4) Notice pursuant to subsections (2) and (3) of this section shall include the following information:

- (a) A description of the vehicle, trailer or similar conveyance;
- (b) The approximate value of the vehicle, trailer or similar conveyance;



- (c) The date and place of the seizure;
- (d) The connection between the vehicle, trailer or similar conveyance and the violation of Section 63-21-39;
- (e) The instructions for filing a request for judicial review; and
- (f) A statement that the vehicle, trailer or similar conveyance will be forfeited to the seizing law enforcement agency if a request for judicial review is not timely filed.

(5) Any person claiming an interest in a vehicle, trailer or similar conveyance which is the subject of a notice under this section may, within thirty (30) days after receipt of the notice or of the date of the first publication of the notice, file a petition to contest forfeiture signed by the claimant in the county court, if a county court exists, or otherwise in the circuit court of the county in which the seizure is made or the county in which the criminal prosecution is brought, in order to claim an interest in the vehicle, trailer or similar conveyance. Upon the filing of the petition and the payment of the filing fees, service of the petition shall be made on the attorney for or representative of the seizing law enforcement agency, and the proceedings shall thereafter be governed by the rules of civil procedure.

(6) If no petition to contest forfeiture is timely filed, the attorney for the seizing law enforcement agency shall prepare a written declaration of forfeiture of the subject vehicle, trailer or similar conveyance and the forfeited vehicle, trailer or similar conveyance shall be used, distributed or disposed of in accordance with the provisions of Section 63-21-107.

**SOURCES:** Laws, 2013, ch. 570, § 3, eff from and after July 1, 2013.

**Editor's Note** — This section is being set out to correct an error in an internal reference in subsection (1). The reference to "Section 63-21-69" was changed to "Section 63-21-39."

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